(22,373.)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1910.**

## No. 752.

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MYTTON MAURY, THOMAS E. IRVINE, O. J. WATROUS, JOHN A. WEBBER, ET AL., PLAINTIFFS IN ERROR,

*vs.*

FRANK H. HITCHCOCK, AS POSTMASTER GENERAL OF THE UNITED STATES.

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IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 14, 1910.

# In the Court of Appeals of the District of Columbia.

No. 2116.

MYTTON MAURY et al., Appellants,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States.

*a* Supreme Court of the District of Columbia.

At Law. No. 52210.

MYTTON MAURY, THOMAS E. IRVINE, O. J. WATROUS, JOHN A. Webber, J. R. Anders, W. J. Marion, O. M. Webster, C. S. Clason, A. S. Stewart, H. C. Sargent, F. E. Ray, Sarah H. Woolston, John A. Thompson, W. T. Marsh, and 1340 Others, Petitioners,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States, Respondent.

UNITED STATES OF AMERICA,
*District of Columbia,* ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition.*

Filed December 10, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52210.

MYTTON MAURY, THOMAS E. IRVINE, O. J. WATROUS, JOHN A. Webber, J. R. Anders, W. J. Marion, O. M. Webster, C. S. Clason, A. S. Stewart, H. C. Sargent, F. E. Ray, Sarah H. Woolston, John A. Thompson, W. T. Marsh, and 1340 Others, Petitioners,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States, Respondent.

Your Petitioners, appearing by O. A. Erdman, their Attorney, respectfully represent and show to the Court:

1. That the Wellington Association, The Wellington Develop-

ment Company and The Wellington Investment Company are corporations respectively organized under the laws of the Territory of Arizona, and the said corporations constitute what is commonly known and designated as The Wellington System.

2. That The Wellington Association aforesaid maintains a business office in the City of Boulder and State of Colorado, and acts as the fiscal agent of The Wellington Development Company and The Wellington Investment Company aforesaid.

2 3. That W. W. Degge is the President and Business Manager of each of the said corporations and resides in the City of Boulder, in the State of Colorado, aforesaid.

4. That Mytton Maury who resides in the State of New York, and John A. Webber who resides in the said City of Boulder, Colorado, Petitioners above named are respectively Directors of The Wellington Association aforesaid, O. J. Watrous, petitioner above named, who resides at the said City of Boulder, Colorado, is a Director of The Wellington Development Company aforesaid and Thomas E. Irvine, petitioner above named, who resides in the said City of Boulder, Colorado, is a Director of The Wellington Investment Company, aforesaid.

5. That all of the petitioners are and were at the time of the acts herein complained of, citizens of the United States, residing in various states, and are, and were at such times, stock-holders in one or more of the respective corporations above mentioned, more than one hundred (100) of them being stock-holders in The Wellington Association aforesaid, more than nine hundred of them stock-holders in The Wellington Development Company aforesaid and more than eight hundred (800) of them being stock-holders in the Wellington Investment Company aforesaid. The names of your petitioners, other than those whose names are above set forth, are contained in a list hereto attached marked Exhibit "A" and made part hereof.

6. That the Respondent, Frank H. Hitchcock is and was at the time of the acts herein complained of, the duly appointed,

3 qualified and acting Postmaster General of the United States.

7. That some time in the year A. D. 1905 complaint was lodged by some person to the said petitioners unknown, in the Post Office Department of The United States, containing charges against the aforesaid W. W. Degge, the nature of which is to the aforesaid petitioners unknown, and the said charges were filed numbered and designated as case Number 61,995-C, and were on the thirty-first day of July, A. D. 1905, referred to the then Chief Inspector of the Post Office Department aforesaid, residing at the City of Denver in the said State of Colorado, for investigation.

8. That from time to time thereafter various items of information in relation to the aforesaid Wellington Association and other corporations managed by the said W. W. Degge, and their business, were requested of the aforesaid W. W. Degge by the aforesaid Chief Inspector at Denver, Colorado, and were furnished by the said W. W. Degge as requested.

9. That on, to-wit, the twenty-first day of January, A. D. 1909,

by the direction of George Von L. Meyer, then the duly appointed, qualified and acting Postmaster General of the United States, the aforesaid W. W. Degge was cited to answer a charge of using the United States mails in a scheme to defraud, and to show cause why a fraud order should not be issued, which said citation was served on the said W. W. Degge by the Postmaster in the City of Boulder, in the State of Colorado, on the twenty-fifth day of January, A. D. 1909, and the fifteenth day of February, A. D. 1909, was then fixed for the hearing thereof. The said citation being in the fol-
4 lowing form, to-wit.

POST OFFICE DEPARTMENT,
OFFICE OF THE ASSISTANT ATTORNEY GENERAL,
WASHINGTON, *January* 21, 1909.

W. W. Degge, Boulder, Colorado.

SIR: Enclosed herewith is a memorandum outlining certain charges which, by direction of the Postmaster General, are under examination in this office, to the effect that you are engaged in conducting a scheme or device for obtaining money or property through the mails by means of false or fraulent pretenses, representations, or promises, in violation of Secs. 3929 and 4041 of the Revised Statutes as amended, a copy of which is also sent herein. It will be observed that these statutes authorize the Postmaster General to prohibit the delivery of mail and the payment of money orders addressed to, or drawn to the order of, any person or company found to be using the mails in the operation of a scheme or device of this character.

It is desired that you make reply to the charges set forth in this memorandum, and February 15, 1909, at 10:30 o'cock a. m. is designated as the time when the case will be considered. Your reply must be in writing. It may be forwarded by mail, or you may present it in person or by attorney at that time and supple-
5 ment the same by oral argument. Should you fail to make answer by the time named, the case will be considered and disposed of in your absence.

Respectfully,

R. P. GOODWIN,
*Assistant Attorney General.*

10. That accompanying the said citation was a written memorandum of the charges in said citation referred to, which said memorandum was in the following form, to-wit.

POST OFFICE DEPARTMENT,
OFFICE OF THE ASSISTANT ATTORNEY GENERAL,
WASHINGTON, *January* 21, 1909.

*Memorandum for the Assistant Attorney General.*

In re W. W. DEGGE, Boulder, Colorado.

This person is operating a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representa-

tions and promises. Said scheme in a general way is about as follows:

He has created a Wellington Association, which he controls and dominates, and of which he is the owner except small interests in some other parties. From time to time he creates various other concerns, all of which he also controls and dominates. The stock of these various subsidiary concerns he sells through the mails to the public at various prices under par, using for the purpose great quantities of printed adver-
6 tising circulars, therein falsely pretending that with the funds to be obtained from sale of such stock said companies will be developed into mining and other enterprises of great value and profit, and many other false statements. The funds obtained by such sale of stock he diverts to his own enrichment by various methods, such as by sale of property from said Association to the subsidiary company, by contracts for commissions to said Association for selling stock, and by various other methods.

In the operation of this scheme he is getting mail as The Wellington Association, The Wellington Development Company, The Wellington Investment Company, The Wellington System, and also in his own name, W. W. Degge.

I recommend that a fraud order be issued against him and these addresses.

P. V. KEYSER,
*Assistant Attorney.*

11. That in response to the citation aforesaid the said W. W. Degge, together with his counsel, O. A. Erdman of Denver, Colorado, appeared at the time therein fixed, before R. P. Goodwin, Esquire, Assistant Attorney General for the Post Office Department of the United States, and showed good and sufficient cause in writing why a fraud order should not be issued, as mentioned in the said charges and citation.

12. That upon the said hearing no witnesses were sworn nor was any sworn testimony of any kind taken or considered, either in support of or in opposition to the said charges by the said R. P. Goodwin, but the only so-called evidence then and there consid-
7 ered by the said R. P. Goodwin consisted of the printed and published advertisements of the said W. W. Degge and printed circulars issued by him at various times, together with statements alleged to have been made by the said W. W. Degge on the eighteenth day of November, A. D. 1908 to Inspectors Birdseye and Durand of the said Post Office Department and taken down in writing; also a printed report contained in a circular headed "Success" of an audit of the books of the aforesaid and other corporations made by The Continental Audit Company of Denver, Colorado, as of the thirtieth day of June, A. D. 1908, which said circular was issued by the said W. W. Degge from Boulder, Colorado, in the month of November, A. D. 1908, and is marked Vol. V. No. 8; also a report in writing made by the said Inspectors Birdseye and Durand, purporting to contain the result of an examination made by them in

the said month of November, A. D. 1908, of the books and records kept in the office of the said W. W. Degge at the said City of Boulder, Colorado.

13. That only a few of the statements made in writing by the said W. W. Degge showing cause as aforesaid why a fraud order should not be issued in the said matter were then, or at any time thereafter, considered by the said R. P. Goodwin, and the said W. W. Degge then and there upon the said hearing produced and submitted to the said R. P. Goodwin as evidence, a large number of exhibits consisting of letters, deeds, declarations of trust, certificates of sale, securities and other documents, all of which were then and
8 there wholly ignored by the said R. P. Goodwin, and were never then nor thereafter considered by him.

14. That upon the completion of the said hearing the said R. P. Goodwin took the said matters under advisement, and thereafterwards, under date of March 8th, A. D. 1909, prepared and submitted as his findings and conclusions thereon to the aforesaid Frank H. Hitchcock, Postmaster General as aforesaid, a memorandum in writing, too lengthy to be incorporated in this petition, containing statements and deductions, drawn in detail from the so-called evidence so as aforesaid considered by him, and reported as his conclusions in the matter to the said Frank H. Hitchcock, that the said W. W. Degge under his own name, and also under the general names of The Wellington Association, The Wellington Development Company, The Wellington Investment Company and The Wellington System, was engaged in operating and conducting a scheme for obtaining money through the United States mails by means of false and fraudulent pretenses, representations and promises, in violation of Section 3929 and Section 4041 of the Revised Statutes of the United States, and recommended that a fraud order be issued against the said W. W. Degge, The Wellington Association, The Wellington Development Company, The Wellington Investment Company aforesaid and The Wellington System, and their officers and agents as such, prohibiting the Postmaster at the said city of Boulder, Colorado, from delivering any mail received at the Post Office in the said City of Boulder, Colorado, to any of the aforesaid persons or corporations, which said memorandum was signed by the
9 said R. P. Goodwin as such Assistant Attorney General and was then and there delivered to the said Frank H. Hitchcock, Postmaster General as aforesaid.

15. That thereafterward the said Frank H. Hitchcock, as Postmaster General of the United States, adopted and confirmed the aforesaid so-called findings and conclusions of the said R. P. Goodwin so as aforesaid reported to him, the said Postmaster General, without any notice to the said W. W. Degge or to any of the aforesaid corporations, or any of the petitioners herein, and without any hearing of any objections thereto, and thereupon, to-wit, on the twenty-ninth day of March, A. D. 1909, the said Frank H. Hitchcock as Postmaster General of the United States, issued and transmitted to the Postmaster at the said city of Boulder, Colorado, an Executive order in the words and figures following, to-wit:

"Post Office Department,
Washington.

*Order No.* 2170.

It having been made to appear to the Postmaster General, upon evidence satisfactory to him, that W. W. Degge, The Wellington Association, The Wellington Development Company, The Wellington Investment Company and The Wellington System, and their officers and agents as such, at Boulder, Colorado, are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations
10 and promises, in violation of the act of Congress entitled "An act to amend certain sections of the Revised Statutes relating to lotteries, and for other purposes," approved September 19, 1890—

Now, therefore, by authority vested in him by said act, and by the act of Congress entitled "An act for the suppression of lottery traffic through international and interstate commerce and the postal service, subject to the jurisdiction and laws of the United States," approved March 2, 1895, the Postmaster General hereby forbids you to pay any Postal Money Order drawn to the order of said party and concerns, and you are hereby directed to inform the remitter of any such postal Money Order that payment thereof has been forbidden, and that the amount thereof will be returned upon the presentation of the original order or a duplicate thereof applied for and obtained under the regulations of the Department.

And you are hereby instructed to return all letters, whether registered or not, and other mail matter which shall arrive at your office directed to the said party and concerns, to the postmasters at the offices at which they were originally mailed, to be delivered to the senders thereof, with the word "Fraudulent" plainly written or stamped upon the outside of such letters or matter, provided, however, that where there is nothing to indicate who are the senders of letters not registered, or other matter, you are directed in that case to send such letters and matter to the Division of Dead Letters
11 with the word "Fraudulent" plainly written or stamped thereon, to be disposed of as other dead matter under the laws and regulations applicable thereto.

(Signed) F. H. HITCHCOCK,
*Postmaster General.*

To the Postmaster, Boulder, Colorado.

(Case 61995-C.)"

16. That as the effect and result of said order, the said Mytton Maury, petitioner as aforesaid, is wholly and effectually prevented from communicating by means of the United States mail with the said W. W. Degge or The Wellington Association aforesaid in relation to the business affairs of the said Corporation, and the said Thomas E. Irvine, O. J. Watrous and John A. Webber, petitioners, Directors as aforesaid, respectively, are wholly and effectually prevented from receiving any communications through the United

States mails as such Directors, at the said City of Boulder, from any of the other petitioners herein named, under any circumstances whatsoever, and all of the aforesaid petitioners are prevented from communicating by means of the United States mails with any of the said Corporations or their officers or agents as such, or with W. W. Degge, the President and Manager of each of the said Corporations, at the said City of Boulder, Colorado.

17. That the business in which the said Corporations and each of them and the said W. W. Degge, as President and Manager of each of the said Corporations, are engaged, and were engaged when
12 the acts before complained of were committed, consists in making investments in lands, Irrigation Ditches, Irrigation Reservoirs, Mines and Mining property, Corporate Stocks, Securities and the like, and neither the said W. W. Degge nor any of the said Corporations is or was at any of the times aforesaid engaged in any business or practices forbidden by Section 3929 or Section 4041 of the Revised Statutes of the United States, or prohibited by any law of the United States whatsoever.

18. That no evidence of any character or description, showing or tending to show that either the said W. W. Degge or any of the said corporations was or were engaged in any of the practices mentioned in section 3929 or section 4041 of the Revised Statutes of the United States aforesaid, was ever brought to the attention or knowledge of the said Frank H. Hitchcock, Postmaster General as aforesaid, or submitted to him at any time; neither was it made to appear to the said Frank H. Hitchcock, Postmaster General as aforesaid, on any evidence whatsoever, that either the said W. W. Degge or any of the said Corporations has or have ever been engaged in any business prohibited by the Postal Laws of the United States, or any scheme or device for obtaining money or property of any kind through the United States mails by means of false or fraudulent pretenses, representations or promises, as defined and set forth in section 3929 or section 4041 of the Revised Statutes of the United States aforesaid, and the petitioners herein say that the said Frank H. Hitchcock, Postmaster General of the United States, as aforesaid, had no jurisdiction whatsoever to issue the aforesaid order herein complained of.

13 19. That the facts shown by the evidence so as aforesaid submitted to or considered by the aforesaid R. P. Goodwin in the matter aforesaid, and reported by him to the said Frank H. Hitchcock, Postmaster General of the United States as aforesaid, upon which the said Frank H. Hitchcock acted in issuing the aforesaid order, are wholly insufficient in the law to sustain the findings and conclusions reported by the said R. P. Goodwin to the said Frank H. Hitchcock as aforesaid, and the said facts are wholly insufficient in the law to constitute any scheme or device for obtaining money through the United States mails by means of false and fraudulent pretenses, representations or promises, within the meaning of section 3929 or section 4041 of the Revised Statutes of the United States aforesaid, or any law whatsoever authorizing the said Postmaster General to issue the order herein complained of.

20. The petitioners herein further show to the Court that as Stockholders in the aforesaid Corporations respectively, none of them have done anything unlawful in the prosecution of their business, neither have any of them used nor are any of them using the United States mails for the transportation of anything vicious, dangerous, corrupting or immoral, nor anything justifying the Post Office Department of the United States in refusing to deliver any communications whatsoever sent through the United States mails which any of them have sent or may hereafter send, postage prepaid, addressed to the aforesaid Corporations respectively, or the officers or
14 agents thereof as such, and particularly to the said W. W. Degge, at Boulder, Colorado, but the said petitioners and each of them are advised and believe that they have the legal and Constitutional right, upon prepayment of lawful postage, to have any and all such communications before referred to transported by means of such mails and delivered to the said W. W. Degge, or to the aforesaid Corporations respectively, their officers or agents as such at the said City of Boulder, Colorado, whenever the same are properly addressed, postage prepaid and deposited in the mails for that purpose, and the aforesaid order operates to deprive the said petitioners and each of them of their lawful Constitutional right to the use of the said mails for the purposes aforesaid, in violation of the Constitution and laws of the United States and particularly of Article 4 and Article 5 of the amendments to the Constitution of the United States aforesaid.

21. And the said petitioners further show to the Court that many of them, since the issuance of the order aforesaid herein complained of, have deposited in the United States mails sundry and divers letters, postage prepaid, addressed to the said W. W. Degge and to the Corporations aforesaid respectively, at the said City of Boulder in the State of Colorado aforesaid, none of which contained any matter forbidden by law, but the Postmaster at the said City of Boulder, acting by the direction and order of the said Frank H. Hitchcock, hereinbefore set forth and complained of, unlawfully and in violation of Article 4 of the Amendments to the Constitution of
15 the United States aforesaid, has unlawfully seized the said letters at the said City of Boulder, Colorado, and has stamped them with the word "Fraudulent" upon the envelope in which the same were respectively enclosed, and has returned the same to the writers thereof respectively, and has thereby unlawfully deprived the writers thereof of the use and facilities of the United States mails, without due process of law and in violation of Article 5 of the amendments to the constitution of the United States aforesaid, and still continues so to do.

22. And the petitioners herein further show to the court that on or about the first day of June, A. D. 1909, the said petitioners presented to the said Frank H. Hitchcock, Postmaster General of the United States as aforesaid, their petition in writing respectfully setting forth the injuries hereinbefore complained of, and respectfully praying the said Postmaster General to forthwith annul and set aside the said order hereinbefore complained of, but the said

Frank H. Hitchcock, Postmaster General of the United States as aforesaid, has wholly ignored the said petition, and has ever since hitherto wholly failed, refused and neglected to annul, revoke or set aside the said order as prayed for in the said petition or at all, and is still continuing to enforce the said order in violation of law and in violation of the lawful and constitutional rights of the petitioners herein, and by the means and in the manner aforesaid, the said Frank H. Hitchcock has exercised, and is exercising, an authority under the United States wholly unwarranted by the Constitution or the laws thereof.

16 23. The petitioners herein further show to the court that they have no remedy in the premises by appeal, writ of error or otherwise, save and except the writ herein prayed for.

Wherefore the petitioners herein respectfully pray the Court to issue its writ of Certiorari herein, commanding the said Frank H. Hitchcock, by a certain day to be designated and fixed in the said writ, to certify to this Honorable Court the record and proceedings in the matters aforesaid, together with all documents, exhibits and evidence, printed and written, submitted to or considered by the said R. P. Goodwin as aforesaid, and remaining on file in the office of the said Postmaster General, as well as the findings and conclusions upon which the said Postmaster General acted in issuing the order herein complained of, to the end that this Honorable Court may review the same, and the said petitioners further pray that upon the hearing and review thereof this Honorable Court may forthwith quash, annul, set aside and hold for naught the aforesaid order herein complained of, at the costs of the respondent herein named, and that in the meantime the aforesaid order may be superseded and the execution thereof suspended according to law.

And the Petitioners will ever pray.

O. A. ERDMAN,
*Attorney for the Petitioners.*

STATE OF COLORADO,
*County of Boulder, ss:*

17 O. A. Erdman, being first duly sworn, upon his oath deposes and says that he is the Attorney for the petitioners named and designated in the foregoing petition; That he has read the foregoing petition and knows the contents thereof, and that the same is true according to the best of his information, knowledge and belief.

O. A. ERDMAN.

Subscribed and sworn to before me this 29th day of November A. D. 1909.

My commission expires Sept. 13th, 1913.

[SEAL.] LESTER J. MOULTON,
*Notary Public.*

*Rule to Show Cause.*

Filed December 10, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52210.

MYTTON MAURY, THOMAS E. IRVINE, O. J. WATROUS, JOHN A. Webber, J. R. Anders, W. J. Marion, O. M. Webster, C. S. Clason, A. S. Stewart, H. C. Sargent, F. E. Ray, Sarah H. Woolston, John A. Thompson, W. T. Marsh, and 1340 Others, Petitioners,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States, Respondent.

Upon the petition filed herein it is this 10th day of December, A. D. 1909, ordered:

18 That the respondent show cause, if any he has, before this Court on Wed., December 15, A. D. 1909, at the hour of 10 a. m., why the prayer of said petition for a writ of certiorari should not be granted; provided a copy of this order be served upon the said respondent on or before December 11th, A. D. 1909.

WRIGHT, *Justice.*

*Marshal's Return.*

Served copy of within order on Frank Hitchcock, Postmaster General of the United States, personally.
Dec. 10, 1909.

AULICK PALMER, *Marshal.*
S.

*Order Extending Time for Filing Answer.*

Filed December 15, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52210.

MYTTON MAURY et al., Petitioners,
vs.
FRANK H. HITCHCOCK, Postmaster-General of the United States.

It is this 15th day of December, A. D. 1909,

19 Ordered: That the time for the respondent to file his answer to the rule to show cause issued herein on the 11th day of December, A. D. 1909, be and the same is hereby extended to the 18th day of December, A. D. 1909.

It is further ordered: That the hearing on the said petition filed herein and the said answer to the rule to show cause be and the same is hereby extended to the 20th day of December, A. D. 1909.

By the Court.

WRIGHT, *Justice.*

*Answer.*

Filed December 20, 1909.

In the Supreme Court of the District of Columbia.

At Law. No. 52210.

MYTTON MAURY et al., Petitioners,
vs.
FRANK H. HITCHCOCK, Postmaster General of the United States, Respondent.

The respondent, Frank H. Hitchcock, Postmaster General of the United States, especially reserving unto himself all benefit of any exception to the uncertainties and defects of the petition filed
20 herein, and to the lack of jurisdiction of this court over him to grant the writ of certiorari to compel him to certify the records and documents referred to in said petition to this court, and of the lack of jurisdiction of this court to review the matters passed upon by this respondent involving the exercise of his judgment and discretion, and objecting to the lack of jurisdiction to interfere with this respondent in the course of his administrative duties, and especially excepting to the failure of the said bill to show any right on the part of the petitioners to the relief therein prayed for, and objecting to the lack of status on behalf of the petitioners to maintain their suit, nevertheless for answer unto said rule and the said petition, says:

1, 2 & 3. That he is advised that the allegations contained in the first, second and third paragraphs of the petition are substantially true, but for want of personal knowledge can neither admit nor deny the same, and so far as it may be material, calls for strict proof thereof.

4 & 5. This respondent has no personal knowledge of the allegations contained in the fourth paragraph, nor of the allegations contained in the fifth paragraph of the said petition, and so far as the same may be material, calls for strict proof thereof.

6. This respondent admits the allegations of the sixth paragraph of said petition, that he was duly appointed, qualified, and is now acting as Postmaster General of the United States.

7. Answering the seventh paragraph of the said petition this respondent says that he is informed that some time prior to
21 this respondent's becoming the Postmaster General of the United States, there was a complaint lodged in the Post Office Department of the United States, against the said W. W. Degge, and that the said charges were referred to the proper authorities of

the Post Office Department, for investigation, but this respondent says that owing to the fact that many of the papers and records of the case now under consideration are not at present on file in the office of this respondent at Washington, District of Columbia, but are on file in the office of the Post Office Department at Denver, Colorado, this respondent cannot at the present time more fully answer the allegations of the said seventh paragraph, and so far as the same may be material, calls for strict proof thereof.

8. Answering the eighth paragraph of the said petition, this respondent is advised that the allegations therein contained are true.

9. This respondent admits the allegations contained in the ninth paragraph of the said petition, that on the twenty-first day of January, 1909, by direction of George von L. Meyer, the then duly appointed and qualified Acting Postmaster General of the United States, the aforesaid W. W. Degge was cited to answer a charge of using the United States mails in a scheme to defraud, and to show cause why a fraud order should not issue; and that said citation was duly served on the said W. W. Degge by the Postmaster in the city of Boulder, in the State of Colorado, on or about the twenty-fifth day of January, 1909, and that the fifteenth day of February,
22 1909, was then fixed for hearing thereof. This respondent further says that he believes that the copy of the said citation set out in said ninth paragraph is a true copy, but for more certainty refers to the original of the said citation, and calls for production thereof.

10. Answering the tenth paragraph of said petition, this respondent admits that accompanying said citation there was a written memorandum of the charges in said citation referred to, which said written memorandum fully set out and apprised the said W. W. Degge of the charges and complaints against him, the said Degge, and fully apprised him of the charges and matters to be considered, and which were eventually considered by this respondent in issuing the fraud order herein complained of. This respondent further says that he believes that the copy of the written memorandum of charges, as set out in said petition, is a true copy of the original of the said memorandum, but for more particularity refers to the original memorandum received by the said Degge, and calls for production and proof thereof.

11. Answering the eleventh paragraph of said petition, this respondent admits, in response to the citation aforesaid, that said W. W. Degge accompanied by his duly authorized counsel, O. A. Erdman, appeared in person, in pursuance to said citation, before the Honorable R. P. Goodwin, Assistant Attorney General for the Post Office Department of the United States, on the fifteenth day of February, 1909, but this respondent denies that the said W. W. Degge showed good and sufficient cause in writing why a fraud order should not be issued as mentioned in said charge and citation. This respondent further says that the said W. W. Degge, although
23 given a full and ample opportunity to file a written justification to the charges set out in the said citation, wholly failed in every particular to rebut, justify, or show any excuse whatsoever

for the fraudulent acts done by him, as set out in said citation, and although the said Degge filed what purported to be an answer to the charges in said citation contained, the same are wholly insufficient in law and in fact to excuse, justify or explain any and all of the fraudulent acts of the said Degge referred to in said citation. Wherefore this respondent denies that at said hearing or at any time has the said W. W. Degge shown good and sufficient cause why the said fraud order should not be issued, as mentioned in said charges and citation. This respondent further says that the said R. P. Goodwin was, on the dates of the said hearing, to-wit, the fifteenth and sixteenth days of February, 1909, and to the present time still is the Assistant Attorney General for the Post Office Department of the United States, and is the person duly authorized and charged with the duty of the hearing and preparation of cases relating to lotteries, and misuse of the mails in furtherance of schemes to defraud the public, and that said hearing was had by him, the said R. P. Goodwin, as Assistant Attorney General for the Post Office Department of the United States, in pursuance to the said Sect. 16 Par. 4, of the Postal Laws and Regulations, duly enacted in pursuance to Section 161 of the R. S. U. S., hereto appended, marked "Exhibit B," and prayed to be read as a part hereof.

12. Answering the twelfth paragraph of said petition, this
24 respondent says that he denies, as set out in said paragraph, that no witnesses were sworn, nor was any sworn testimony of any kind taken or considered, either in support of or in opposition to said charges, by said R. P. Goodwin, but this respondent says that in the presence of the said W. W. Degge and of his counsel, O. A. Erdman, Postoffice Inspectors G. F. H. Birdseye, Esquire, and B. H. Durand, Esquire, were called as witnesses, and testifying under their oath of office, gave evidence in support of the said charges, and in further support thereof, written and printed advertisement, circulars and letters were presented to the said R. P. Goodwin for consideration, including also the other printed matter referred to in the said twelfth paragraph of said petition, offered in evidence by P. F. Keyser, Assistant Attorney for the Post Office Department. This respondent further says that at said hearings, there was presented in the presence of the said W. W. Degge and his counsel, all the testimony and written and printed evidence in support of said charges which was considered at any time by him, the said R. P. Goodwin, in drafting and making up his report on said case to the Postmaster General of the United States, and opportunity was given at the said hearing on the fifteenth and 16th day of February, 1909, to the said W. W. Degge, and to his counsel, the said E. A. Erdman of Denver, Colorado, to cross-examine the witnesses testifying at said hearing, and to offer in rebuttal to the said testimony and to the evidence adduced at said hearing, any verbal, written or printed evidence which they might care to produce to rebut the charges in said citation contained, but that the said
25 Degge and his counsel, the said Erdman, failed to offer any material testimony to rebut the said charges; but the said Erdman, as counsel for the said Degge, was heard by the said Good-

win at length in an oral argument at the said hearing, both on the fifteenth day of February, and at an adjourned meeting on the sixteenth day of February, 1909, and at the conclusion thereof the said Erdman, as counsel for the said Degge, requested further time to submit evidence, and in pursuance to said request, he was allowed until the second day of March to present such further matters as he might desire, the said Erdman stating at that time that such continuance until the second day of March was all that he desired, and that this would allow him ample time to file any matters which he might desire in said case; that thereafter, and prior to the second day of March, 1909, the said R. P. Goodwin received from the said Erdman, as counsel for said Degge, a written argument upon the said case under consideration, which was duly considered by him, the said Goodwin, in pursuance to the authority in him vested, as set out in the eleventh paragraph of this answer, in the preparation of his report to the Postmaster General of the United States. This respondent further denies each and every allegation in the twelfth paragraph of the said petition, as alleged, and says that the truth and the facts are as hereinbefore set forth; that the evidence was "satisfactory" to the Postmaster General, and was such evidence as he was fully authorized and empowered by law to consider in determining whether a fraud order should be issued by him. For a more complete answer to the said twelfth paragraph of the
26 said petition, this respondent had hereto annexed a certified copy of the report of the said R. P. Goodwin upon the case of the said W. W. Degge, the Wellington Association, the Wellington Development Company, the Wellington Investment Company, and the Wellington System, which said report, entitled "Memorandum for the Postmaster General," and dated March 8, 1909, and also a copy of the order of the Postmaster General, dated March 29, 1909, and a copy of the letter from said R. P. Goodwin, Assistant Attorney General, to the Postmaster of Boulder, Colorado, dated March 30, 1909, which said certified copies are herein filed and marked "Respondent's Exhibits A, A1 and A2" respectively, and prayed to be read as a part of this answer.

13. Answering the said thirteenth paragraph of said petition, this respondent denies that only a few of the statements made in writing by the said W. W. Degge, purporting to show cause why a fraud order should not issue in said matter, were then or at any time thereafter considered by the said R. P. Goodwin, as Assistant Attorney General for the Postoffice Department, and this respondent denies that at said hearing a large number of exhibits consisting of letters, deeds, declarations, trusts, certificates of stock, securities and other documents, presented on behalf of the said W. W. Degge, were then ignored by the said R. P. Goodwin, or were never then nor thereafter considered by him; and this respondent says that the allegations in the said paragraph are false and misleading, and your respondent avers the facts to be that all of the matters submitted by the said Degge and by his attorney at the said hearing on the fifteenth
27 and sixteenth days of February, 1909, and at any other time prior to and including the second day of March, 1909, were

given by him, the said Goodwin, as Assistant Attorney General for the Postoffice Department, in pursuance to the authority vested in him as set out in the eleventh paragraph of this answer, a full and impartial investigation and consideration, and the said matters, evidence and papers produced by him, the said Degge, and the argument of counsel for the said Degge, were fully considered by the said Goodwin and by the Postmaster General of the United States, as a basis upon which his said order of March 29th was made.

14. This respondent admits the allegations of the fourteenth paragraph of the said petition, but for more particularity refers to the copy of the memorandum of the said R. P. Goodwin, dated March 8, 1909, and the orders issued thereon, which said copy is filed with this response, marked "Respondent's Exhibit A," and prayed to be read as a part of this answer.

15. Answering the fifteenth paragraph of the said petition, this respondent says that he admits that on the twenty-ninth day of March, 1909, this respondent issued and transmitted to the Postmaster of the city of Boulder, Colorado, an Executive Order, a true copy whereof is appended to respondent's Exhibit A, filed herein and prayed to be read as a part of this answer. This respondent, however, denies that he adopted and confirmed the findings and conclusions of the said R. P. Goodwin, without any hearing or objections thereto, as alleged in said petition, but this respondent
28 says that the said W. W. Degge had a full, complete opportunity for hearing, and was heard and represented by counsel as hereinbefore set out in this answer, and in pursuance to the law and the rules of this Department, as set out in the eleventh paragraph of this answer; and the said Degge had an opportunity to submit evidence, and cross-examine witnesses, and the counsel of the said Degge was permitted and did argue the said case at length as hereinbefore set out, and did further submit a written argument in support of the contentions of his client, and this respondent says that all of the matters submitted to the said Assistant Attorney General, and considered by him, were considered by this respondent, and no other matters other than those considered by the said Assistant Attorney General, were considered by this respondent in forming his order of March 29th, referred to in said petition. Such evidence as was considered by this respondent was satisfactory to him and was such as he was authorized to consider, and such evidence satisfied him that the said W. W. Degge, the Wellington Association, the Wellington Development Company, the Wellington Investment Company, and the Wellington System, and their officers and agents as such, were then and had for some time prior thereto been "engaged in conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises."

This respondent further says that the hearing accorded the petitioners was had in pursuance to the rules and regulations
29 of the Postoffice Department, and said hearing was duly accorded, and every opportunity was given to present a defense; that there was no defense presented to the charges in the citation

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# CARD 2

contained; that the facts shown by the evidence in support of the charges were not contradicted nor rebutted in any particular; that the evidence was amply satisfactory to the Assistant Attorney General and to this respondent; that the charges were sustained, and further this respondent says that although a hearing was duly had and full opportunity given to rebut the charges, that such hearing was not accorded the said Degge as a matter of right, but one of grace, in that there is no law requiring a hearing in cases of this character, but the only requirement of the law is that the evidence in support of the charges shall be satisfactory to the Postmaster General.

16. Answering the sixteenth paragraph of said petition, this respondent says that the effect and result of the said order is shown by the terms thereof, a copy of which said order is filed with this answer, marked Respondent's Exhibit A, and prayed to be read as part hereof. Answering the remaining allegations of said paragraph, this respondent says that they contain mere conclusions of law, which he is advised he is not called upon to answer.

17. This respondent denies that the business in which the said corporations and each of them and the said W. W. Degge as President and Manager of each of said corporations, were engaged at the time the order complained of was issued, and in which they had for some time theretofore been engaged, was a legal investment business in lands, irrigation ditches, irrigation reservoirs, mining
30 property, corporate stocks, securities, and the like; and this respondent denies that neither the said W. W. Degge nor any of the said corporations is or was at any time not engaged in any business of practices forbidden by Section 3929 and Section 4041 of the Revised Statutes of the United States, or prohibited by any law of the United States.

This respondent avers that in truth and in fact the said W. W. Degge was, at the time of the issuance of the said fraud order by this respondent, and for a long time prior thereto, operating a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises; that the said scheme, as will appear to be more fully set out in the report of R. P. Goodwin, Assistant Attorney General, filed herewith, and marked Respondent's Exhibit A, which said report is prayed to be read as a part of this paragraph, was carried on by the said W. W. Degge in substance as follows:

That he, the said W. W. Degge, created a "Wellington Association," which he controls and dominates, and is the owner of said company, except for some small outstanding interest in other parties, whom he also controls; that from time to time the said Degge created various other concerns, all of which he controls and dominates, these other concerns being termed the "Wellington Development Company" the "Wellington Investment Company" and the "Wellington System"; that the stock of these various subsidiary concerns the said Degge sold through the mails to the public at various prices under par, using for the purpose great quantities of printed advertising circulars, therein falsely pretending that with the funds so
31 obtained from the sales of such stock the said companies would be developed into mining and other enterprises of

great value and profit, and through such advertisements and circulars the said Degge made other false and fraudulent statements; that the funds obtained by such sale of stock he, the said Degge, diverted to his own enrichment by various methods, such as by the sale of property from the said Association to said subsidiary companies, by contracts for commissions to said Association for selling stock, and by various other illegal and fraudulent methods; that in the operation of this scheme the said Degge was getting mail through the postoffice establishment of the United States as the Wellington Association, the Wellington Development Company, the Wellington Investment Company, and the Wellington System, and also in his own name, W. W. Degge; all of which will more fully and at large appear by the report of the said R. P. Goodwin, filed herewith.

18. Answering the eighteenth paragraph of said petition, this respondent denies that no evidence of any character or description showing or tending to show that either the said W. W. Degge or any of said corporations were engaged in any of the practices mentioned in Section 3929 and Section 4041 of the Revised Statutes of the United States was ever brought to his attention and knowledge; but this respondent says that upon evidence satisfactory to him, which said evidence had formally, in the presence of the said W. W. Degge and his counsel, been presented to the said R. P. Goodwin,
32 Assistant Attorney General for the Postoffice Department, in pursuance to law, as set out in this answer, and after a full hearing had been given to the said Degge as herein set out, and the report thereon referred to this respondent, that under authority vested in him, and being satisfied upon the evidence presented that the said Degge and the various companies named in said order were conducting a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, did on the 29th day of March, A. D. 1909, issue to the Postmaster at Boulder, Colorado, the order denying the use of said mails to the said Degge and the said companies, as will more specifically appear by a true copy of said order hereto appended and marked Respondent's Exhibit A and prayed to be read as a part of this paragraph.

This respondent further says that the evidence so offered was satisfactory to the said Assistant Attorney General for the Postoffice Department, and was fully considered by him and by this respondent, and that the said evidence did satisfy this respondent that the said Degge and the said corporations were conducting a scheme through the means aforesaid to defraud by use of the mails, in violation of Section 3929 and Section 4041 of the Revised Statutes of the United States, and that thereupon, acting within his own discretion as Postmaster General of the United States, and by virtue of the authority in him imposed by statute, this respondent issued the said order of March 29, 1909.

Further answering the said paragraph, this respondent says
33 that upon the evidence satisfactory to him, as will appear by the report of the said R. P. Goodwin, Assistant Attorney Gen-

eral, herein referred to, and prayed to be read as a part hereof, that he found and avers the fact to be that the said scheme of the said Degge and the said Corporations as appears from the Respondent's Exhibit A filed herein, was a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, and that the said Degge and the said corporations had for a long time prior to said order been engaged in said business prohibited by the postal laws of the United States and in a scheme or device for obtaining money by means of the mails of the United States, as prohibited by statute, as is more fully set out in this answer and in the Respondent's Exhibit A filed herein and prayed to be read as a part hereof.

This respondent further says that the matter of deciding whether or not the said scheme set forth in this answer is one against which a fraud order should issue, is committed by law to his judgment and determination, and that in determining the said matter the discretion vested in him is not reviewable by the court.

19. Answering the nineteenth paragraph of the said petition, this respondent denies that the facts shown by the evidence submitted to and considered by the said R. P. Goodwin, Assistant Attorney General, in pursuance to the authority vested in him as set
34 out in the eleventh paragraph, and reported by him to this respondent, upon which this respondent is alleged to have acted in issuing the said order, are wholly insufficient in law to sustain the findings and conclusions in said paragraph referred to. This respondent further denies that the said facts are wholly insufficient in law to constitute any scheme or device for obtaining money through the United States mails by means of false and fraudulent pretenses, representations, and promises, within the meaning of Section 3929 and Section 4041 of the Revised Statutes of the United States, or of any law whatsoever authorizing this respondent to issue the order complained of in said petition.

On the contrary, this respondent says that the evidence adduced as aforesaid was undeniably and without question so clear and convincing to the mind of this respondent and to the mind of the said R. P. Goodwin, Assistant Attorney General for the Postoffice Department, and this respondent believes that the said evidence would be so clear and convincing to any unprejudiced mind so reviewing the same, as to lead to no other conclusion than that arrived at by the said R. P. Goodwin, Assistant Attorney General for the Postoffice Department, and this respondent; that the said evidence fully and in every particular supported the conclusion arrived at by the said R. P. Goodwin, Assistant Attorney General for the Postoffice Department, and the order of this respondent, and for a more particular detail of the said evidence and of the character of the business transacted by the said Degge and his various companies, reference
35 is had to the memoranda of the said R. P. Goodwin, Assistant Attorney General for the Postoffice Department, a copy of which is filed herewith and marked Respondent's Exhibit A, and prayed to be read as a part of this paragraph.

20. Answering the twentieth paragraph of the said petition, this

respondent says that the proof of fraudulent enterprises and fraudulent practices by the said W. W. Degge and the said corporations, against which the fraud order was issued by this respondent, was full, ample and complete justification for this respondent in the administration of his duties as Postmaster General of the United States, to issue the order as aforesaid, as will appear from the memoranda of the said R. P. Goodwin, Assistant Attorney General for the Postoffice Department, filed herewith and marked Respondent's Exhibit A, and prayed to be read as a part of this paragraph.

This respondent further says that the remaining allegations contained in said paragraph refer to conclusions of law which he is advised he is not called upon to answer.

This respondent, however, denies the alleged rights of the said petitioners or any of them, or that the said petitioners or any of them have been denied their constitutional rights to the use of the said mails, in violation of the Constitution and the laws of the United States.

21. Answering the twenty-first paragraph of the said petition this respondent says that he has no personal knowledge of the allegations in said paragraph contained, and as far as the same may be
36 material calls for strict proof thereof.

This respondent, however, denies the conclusions in said paragraph contained, and further denies that the said acts therein referred to are unlawful or in violation of Article 4 of the Amendments to the Constitution of the United States or are in violation of Article 5 of the Amendments to the Constitution of the United States.

22. Answering the twenty-second paragraph of the said petition, this respondent says that he denies that he has wholly ignored the request of the said petitioners in said paragraph referred to, but this respondent avers the fact to be that upon due consideration thereof he was convinced that the order issued by him on the twenty-ninth day of March, 1909, was proper, and that as part of the administrative duties of this respondent it was his duty to refuse to annul and revoke or set aside the said order as requested by said petitioners, and this respondent further says that the said order after due consideration thereof is still continuing in force and effect; but this respondent denies that the said order is in violation of the law or in violation of the lawful constitutional rights of the petitioners, and this respondent further denies that by said order and by continuing the same in force and effect he is exercising an authority under the United States wholly unwarranted by the Constitution or laws thereof.

On the contrary, this respondent says that under section 3929 and section 4041 of the Revised Statutes of the United States it is
37 the duty of this respondent in his official capacity as Postmaster General of the United States, upon evidence satisfactory to him, that persons or companies are engaged in conducting a scheme or device for obtaining money through the mails by means of false or fraudulent pretenses, representations or promises, to issue an order similar to that issued by this respondent on the twenty-ninth day of March, 1909, against the said W. W. Degge and his various associations; and this respondent further says that pursuant

to Section 161 of the Revised Statutes of the United States, authorizing the Postmaster General of the United States to prescribe rules and regulations not inconsistent with law for the distribution and performance of the business of the said Department, the said R. P. Goodwin, the then duly authorized and acting Assistant Attorney General for the Postoffice Department, was by Section 21 of the Postal Laws and Regulations the duly authorized person constituted with the power of hearing cases relating to lotteries and the misuse of the mails in the furtherance of schemes to defraud the public, and that in pursuance to citations duly issued a hearing was accorded to the said W. W. Degge on his own behalf and on behalf of the various companies controlled by him and named in said order of this respondent of March 29th, 1909, and the said Degge was permitted at said hearing and adjournments thereof to offer testimony, to cross-examine witnesses if he so desired, and to be represented by counsel, and in this said particular, as more fully set out in this answer, the said Degge has been fully accorded a hearing in pursuance to law,

as will more fully appear by copy of the report of R. P. Good-
38 win, Assistant Attorney General for the Postoffice Department, herein referred to; that the order of this respondent denying the use of the mails was passed upon the evidence adduced at said hearing, which evidence was satisfactory to this respondent; that the order therein referred to was proper to be made by him as Postmaster General of the United States in the proper enforcement of his administrative duties as such officer.

23. Answering the twenty-third paragraph of said petition, this respondent denies that the petitioners have no remedy save and except the writ of certiorari prayed for in said petition. This respondent avers that the said writ is and would be improper to review the action of this respondent as Postmaster General of the United States in the performance of his official and administrative duties as such officer, and this respondent says that he is advised and therefore believes that this Court is without jurisdiction to issue the writ prayed for in said petition or to review the action of this respondent as such officer, and this Court is without jurisdiction to quash, annul, set aside or hold for naught the said order of this respondent.

This respondent further says that the matter of deciding whether or not said scheme set forth in this answer is one against which a fraud order should issue, is committed by law to his judgment and determination, and that in determining the said matter the discretion vested in him is not reviewable by the Court.

39 And having fully answered the said petition and the rule to show cause filed herein, this respondent prays that the said petition be dismissed and the rule to show cause be discharged, and your respondent further prays to be hence dismissed from further answer, with costs.

FRANK H. HITCHCOCK,
*Postmaster General of the United States of America.*

DANIEL W. BAKER,
Per R. G. H.,
*U. S. Attorney for D. C.,*
*Attorney for Respondent.*

DISTRICT OF COLUMBIA, *ss:*

I, Frank H. Hitchcock, being first duly sworn, on oath depose and say that I am the Postmaster General of the United States of America; that I have read the foregoing answer by me subscribed and know the contents thereof; that the matters and things therein stated of my own knowledge are true, and those stated on information and belief I believe to be true.

FRANK H. HITCHCOCK.

Subscribed and sworn to before me this 19th day of December 1909.

[SEAL.] GEORGE W. REIK,
*Notary Public, D. C.*

40 RESPONDENT'S EXHIBIT B.

*Supplement to the Postal Laws and Regulations of the United States of America.*

*Sec. 16, Paragraph 4.* The Assistant Attorney-General is charged with the duty of giving opinions to the Postmaster-General and the heads of the several offices of the Department upon questions of law arising upon the construction of the Postal Laws and Regulations, or otherwise, in the course of business in the postal service; with the consideration and submission (with advice) to the Postmaster-General of all claims of postmasters for losses by fire, burglary, or other unavoidable casualty, and of all certifications by the Auditor for the Post-Office Department of cases of proposed compromises of liabilities to the United States, and of the remission of fines, penalties and forfeitures under the statutes; the keeping and preparation of all correspondence with the Department of Justice relating to prosecutions and suits affecting or arising out of the postal service, and with the consideration of applications for pardon for crimes committed against the postal laws which may be referred to the Department; with the preparation and submission (with advice) to the Postmaster-
41 General of all appeals to him from the heads of the offices of the Department depending upon questions of law; with the determining of questions as to the delivery of mail the ownership of which is in dispute; with the hearing and consideration of cases relating to lotteries and the misuse of the mails in furtherance of schemes to defraud the public; with the consideration of all questions relating to the mailability of alleged indecent, obscene, scurrilous, or defamatory matter; with the examining and, when necessary, drafting of all contracts of the Department; and with such other like duties as may from time to time be required by the Postmaster-General.

42 RESPONDENT'S EXHIBIT A.

Form 278. P. V. K.

Post Office Department.
Office of the
Assistant Attorney General,
Washington.

File No. —. MARCH 30, 1909.

Postmaster, Boulder, Colorado.

SIR: I inclose herewith a copy of order no. 2170, dated March 29, 1909, forbidding the delivery of mail matter and the payment of money orders to W. W. Degge, The Wellington Association, the Wellington Development Company, the Wellington Investment Company, and the Wellington System, and their Officers and Agents as Such, the original of which, signed by the Postmaster General, has been retained on the files of this Department.

In the enforcement of this order, please observe the following general regulation, published in the United States Postal Guide for January, 1903 (page 955, section 30), viz:

"Postmasters are notified that fraud orders issued under the provisions of the Acts of September 19, 1890 (26 Stats. L. 465) and March 2, 1895 (28 Stats. L. 963) do not cover mail matter under the frank of a Senator or Representative or other officer entitled to the franking privilege, nor that which is covered by an official envelope. Nor do these orders apply to matter not under seal, such as newspapers, circulars, etc., unless specifically stated in the order, or by subsequent letter of instructions."

43 Very respectfully, R. P. GOODWIN,
*Assistant Attorney General.*

Post Office Department,
Washington.

Order No. 2170. MARCH 29, 1909.

It having been made to appear to the Postmaster General, upon evidence satisfactory to him, that W. W. Degge, The Wellington Association, The Wellington Development Company, The Wellington Investment Company, and The Wellington System, and their officers and Agents as Such, —— at Boulder, Colorado, are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations, and promises, in violation of the act of Congress entitled "An act to amend certain Sections of the Revised Statutes relating to lotteries, and for other purposes," approved September 19, 1890.

Now, therefore, by authority vested in him by said act, and by the act of Congress entitled "An act for the suppression of lottery traffic through international and interstate commerce and the postal service, subject to the jurisdiction and laws of the United States" approved March 2, 1895, the Postmaster General hereby forbids you

to pay any post Money Order drawn to the order of said party
44 and concerns, and you are hereby directed to inform the remitter of any such postal money order that payment thereof has been forbidden, and that the amount thereof will be returned upon the presentation of the original order or a duplicate thereof applied for and obtained under the regulations of the Department.

And you are hereby instructed to return all letters, whether registered or not, and other mail matter which shall arrive at your office directed to the said party and concerns, to the postmasters at the offices at which they were originally mailed, to be delivered to the senders thereof, with the word "Fraudulent" plainly written or stamped upon the outside of such letters or matter. Provided, however, that where there is nothing to indicate who are the senders of letters not registered or other matter, you are directed in that case to send such letters and matter to the Division of Dead Letters with the word "Fraudulent" plainly written or stamped thereon, to be disposed of as other dead matter under the laws and regulations applicable thereto.

F. H. HITCHCOCK,
*Postmaster General.*

To the Postmaster, Boulder, Colorado.

(Case 61995-C.)

45 S. K.

MARCH 8, 1909.

*Memorandum for the Postmaster General.*

In re W. W. DEGGE, THE WELLINGTON ASSOCIATION, THE WELLINGTON DEVELOPMENT CO., THE WELLINGTON INVESTMENT CO., THE WELLINGTON SYSTEM, BOULDER, COLORADO.

On January 21, 1909, W. W. Degge of Boulder, Colorado, promoter of the companies mentioned in the caption of this memorandum, was cited to answer the charge of using the mails in a scheme to defraud, and to show cause why a fraud order should not be issued. This notice was served on him by the Postmaster at Boulder January 25th, and February 15th was fixed for the hearing. At that time Mr. Degge appeared before me in response to said notice with his attorney, Mr. O. A. Erdman, of Denver, Colorado, and was heard at length. Inspectors Birdseye and Durand, who investigated the case, were present at my request. Both the 15th and 16th of February were consumed in the hearing, and at its conclusion the respondent asked further time in which to submit additional evidence. I allowed him until March 2nd to present such further matters, and the same have now been received and carefully considered.

Mr. Degge has been engaged for the past several years and is now
46 engaged in using the mails to sell to the general public shares of stock in several corporations which he has organized and promoted for the alleged purpose chiefly of developing min-

ing properties and irrigation projects. He has accomplished the sale of these stocks by the use of a great number of false and fraudulent pretenses and representation, and instead of honestly investing the funds for the benefit of the purchasers of stock in accordance with his promises, he has manipulated the concerns so as to divert large portions of such funds to his own enrichment. Those misrepresentations and diversions will be set out briefly in the following narrative of his operations.

The facts that are hereinafter given are based entirely unless it is otherwise specifically stated, upon Mr. Degge's published advertisements and circulars, upon statements made November 18, 1908, to the Inspectors and taken down in writing; upon the facts shown by the audit made, at his request, of his books by the Continental Audit Company, of Denver, Colorado, dated November 6, 1908, and showing the condition of the books as of June 30, 1908, and upon facts obtained by examination of Mr. Degge's books and records by the Inspectors at their interview with Mr. Degge in November.

The Wellington Association was incorporated January 2, 1905, for $500,000 shares of a par value of $1 each. Mr. Degge has used this company as his inside corporation. On November 18, 1908 Mr. Degge stated to the Inspectors that at that time he and his family held 225,000 shares of common and 31,250 shares of preferred, and that the only other stock outstanding were 124,770 shares of preferred held by 607 individuals. The Inspectors state that the stock sold the public was sold by Mr. Degge through the mails by
47 advertising prior to May, 1906, as from that time to the time of the investigation in November, 1908, the records of Mr. Degge and the Association showed that no stock of the Association was sold to the public. The stock holdings of Mr. Degge and his family, with the exception of 6,250 shares of preferred, were obtained at the organization in exchange for certain properties, mining and oil stocks, etc. Mr. Degge's answer to the citation to show cause increases by a few hundred shares the amount of preferred stock held by the public at the time the answer was submitted, February 16, 1909, albeit he states the number of stockholders is still the same.

The audit taken as of June 30, 1908, shows 156,020 shares of preferred stock then outstanding. These slight discrepancies are probably due to the fact that this stock has been sold on the instalment plan, and the stock was not shown on the records as outstanding until fully paid for. The stock holdings of Mr. Degge in the subsidiary companies is quite in contrast to his holdings in the Association. His holding- in the subsidiary companies are nominal, except where he engaged in buying stock of a subsidiary company and reselling same to the public at a large advance and profit to himself personally.

Since that time he has organized and promoted the following subsidiary companies:

The Wellington Goldfield Mining Company, incorporated June 10, 1905, under the laws of Arizona, with 1,500,000 shares of stock of par value of 25 cents per share.

The Manhattan Chief Gold Mining Company, incorporated under

the laws of Arizona February 6, 1906, with 1,000,000 shares
48 of stock of par value of $1 a share.

The Midway Mines and Town company, incorporated under the laws of Arizona March 29, 1906, with 1,000,000 shares of stock at par value of $1.

The Wellington Realty Company, incorporated April 10, 1906, under the laws of Colorado, with 5,000 shares of Stock of par value of $100 per share. Very little of this stock has been sold to the public,—only 54 shares to 20 persons, of which 20 shares are held by two persons, and for which only $2,750 was received by the treasury of this company. The Association early ceased offering this stock, and instead retained practically all of same for itself. The Association holds 1,000 shares, which is the only stock issued outside of the 54 shares held by the public.

The Wellington Development Company, incorporated January 10, 1907, under the laws of Arizona, with a capital stock of 3,000,000 shares, par value $1 each. Its stockholders number 1,900 persons.

The Wellington Investment Company, incorporated January 4, 1908, under the laws of Arizona, with a capital stock of 3,000,000 shares of par value of $1 per share. Its stockholders number 1,007.

The audit of the Continental Audit Company shows that the treasuries of the Association and subsidiary companies have received from the sale of stock the following amounts:

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|---|---|
| Wellington Association | $115,720.00 |
| Wellington Goldfield Mining Company | 18,992.90 |
| Manhattan Chief Gold Mining Company | 11,386.25 |
| Midway Mines and Town Company | 1,582.50 |
| Wellington Realty Co. | 2,750.00 |
| Wellington Development Company | 181,644.00 |
| Wellington Investment Company | 78,058.00 |
| | $410,133.65 |

| | | |
|---|---|---|
| 49 Stock bought by Asso. of Dev. Co. | $35,000 | |
| Stock bought by Degge of Dev. Co. | 10,000 | |
| Stock bought by Asso. of Goldfield Co. | 2,700 | |
| | | 47,700.00 |
| Amount paid by general public for treasury stock | | $362,433.65 |
| Deduct: Association sales | | 115,720.00 |
| Amount paid by public to treasuries of subsidiary companies for stock | | $246,713.65 |

The audit shows that over $130,000 of this $246,713.65 has been diverted as "profits" to the Association (greatly to the benefit of W. W. Degge), and that the business has been so manipulated that the Association has made large cash profits out of each and every company, and left every company but one heavily in debt to the Association. The "profits" diverted to the Association, in the face of the much advertised equity of this system, out of the money paid by

the public for stock into the treasuries of the subsidiary companies are given by the audit company as follows:

| | |
|---|---|
| On mines sold Development Co | $4,999.95 |
| On sale to Realty Co | 1,470.00 |
| On sale of Wellington Gardens to Dev. Co | 13,333.33 |
| On sale of Wellington Gardens to Inv. Co | 38,333.34 |
| On sale to Wellington Goldfield Co | 97.00 |
| On promotion of Manhattan Chief Co | 3,000.00 |
| On sales of mines to Investment Co | 10,000.00 |
| On sale of Tri-Metallic stock to Inv. Co | 8,333.33 |
| Brokerage (Commissions for selling stock) | 62,004.05 |
| | $141,571.00 |
| Deduct 25% commission charged by Asso. against Dev. Co. on stock bought by Asso. and Degge from Dev. Co | 11,250.00 |
| Amount of profit diverted to Asso. from public's payments to treasuries of subsidiary companies | $130,321.00 |

The audit shows that the Association has further "profited" by securing quantities of stock of the subsidiary companies and
50 reselling same to the general public at large profits for its private benefit and without benefit to the companies from which the stocks were taken, in the place of filling orders with stock from the treasury of the subsidiary company. The profits on stocks so sold are given in the audit as follows:

| | |
|---|---|
| Midway Mines & Town Co | $505.00 |
| Manhattan Chief Co | 6,496.40 |
| Wellington Development Co | 49,746.59 |
| Wellington Investment Co | 331.00 |
| | $57,078.99 |
| (*See note below) Profit of W. W. Degge from sale to public of stock of Development Company for his private account (approximately) | 16,000.00 |
| | $73,078.99 |
| (*See note below) Add the 25% commissions charged by the Asso. on sales of Dev. stock to the Asso. and Degge | 11,250.00 |
| Total | $84,328.99 |

(*) NOTE.—The item of $11,250.00 "commissions" referred to above is shown by the audit in the brokerage profit of $62,004.05. I have deducted same from that item for the purpose of comparing the amount contributed by the public for stock to the treasuries of the subsidiary Companies and the portion of that amount taken by the Association as profits. I have included it in the profit on the

private sale of stock because it reduced by that amount the cost to the Association of the stock bought by it and Mr. Degge from the Development Company and thus increased the "profit" of the Association when that stock was resold to the public.

The $16,000.00 profit of Mr. Degge was not shown on the books of the association and so was not shown by the audit. The same was learned by the Inspectors from their examination of Mr. Degge and his records. They found that in the Spring of 1907, when the stock of the Development Company was selling at 25 cents, Mr. Degge instead of filling orders with the Development Company's treasury stock filled the orders with private holdings of the Association, to its profit of $49,746.59 as shown above, and with his private holdings of stock which he had bought from the development Company a few months previously at 10 cents and for which he did not pay the Development Company until months after he had sold same at 25 cents.

According to the audit, the Wellington Association still holds large blocks of stock in the subsidiary companies, which it
51 lists in its assets at the following value:

| | |
|---|---|
| Wellington Realty Company | $9,970.00 |
| Manhattan Chief | 1,473.90 |
| Wellington Goldfield | 2,967.60 |
| Wellington Development Co. | 37,050.44 |
| Wellington Investment Co. | 19,265.00 |
| Total | $70,726.94 |

The various subsidiary companies are shown by the audit to be in debt to the Association as follows:

| | |
|---|---|
| Wellington Goldfield M. Co. | $8,285.96 |
| Wellington Investment Co. | 35,665.43 |
| Wellington Development Co. | 358.92 |
| Midway Mines and Towns Co. | 1,861.19 |
| Wellington Realty Co. | 666.47 |
| Total | $46,837.97 |

The total amount of money shown to have been paid by the public to Mr. Degge for stock in the Association and the subsidiary companies (treasury and private) is as follows:

| | | |
|---|---|---|
| To treasuries of subsidiary companies | | $246,713.65 |
| To treasury of Association | | 115,720.00 |
| To Degge and Association for stock sold for their private account, | | |
| Profit | $73,078.99 | |
| Cost | $47,700.00 | |
| | | 120,778.99 |
| | | $483,212.64 |

The audit shows no profit to the Association from the sale of Goldfield Mining Company stock, and instead charges a loss to the Association on that account of $1621.05. The Association received 700,00- shares of stock of this company in exchange for five undeveloped mining claims which had cost the Association but a nominal amount. In addition it received 120,000 shares as promotion
52 stock, and bought 100,000 shares for $2,700.00. Practically, therefore, the Association received 920,000 shares of Goldfield stock for $2,700.00. To the time of the audit it sold of this stock a considerable amount, and received therefor $5,111.35, and then had on hand 327,260 shares that were given a value of $2,967.60. Accordingly the Association had received for $2,700.00 a value of $8,078.95, or a profit of $5,378.95 which might be increased or decreased accordingly as the unsold stock realized more or less than $2,967.60.

The audit also shows a loss on sale of Venir stock by the Association to the Investment Company of $6,333,33. Mr. Degge says this was a bookkeeping mistake and has since been corrected, that amount being charged against the Investment Company.

Since the audit, and between June 30 and December 30, 1908, the conditions shown above have changed some as shown by statement published by Mr. Degge in the January-February 1909, issue of his promotion organ "Success," as follows:

Increase of Stock Sales by Treasuries of Subsidiary Companies—

| | |
|---|---|
| Development Company | $16,957.50 |
| Investment Company | 33,492.00 |

Indebtedness — Subsidiary Companies to Association Decreased to—

| | |
|---|---|
| Development Company | $16,233.02 |
| Investment Company | 28,670.56 |

Association Profits increased:

| | |
|---|---|
| Profits on various stock sold from June 30, 1908, to December 30, 1908 | $6,838.12 |
| Brokerage | 13,136.33 |

Association reduced its Holdings of Stock of Subsidiary Companies to—

| | | |
|---|---|---|
| 53 | Development Company | $33,726.22 |
| | Investment Company | $15,190.00 |

These statements also show that 146,000 shares of Tri-Metallic Mining Company Stock have been sold by the Association to the Development Company for $5,000. The cost of this stock to the Association was $1,666.67 (see audit for Association June 30th and Association statement December 30, 1908, consequently there was a profit on this transaction to the Association of $3,333.37. They also show that the association has sold to the Development Company for

$9,333.33 one third of the interest the Association acquired in the Venir property. This Venir Stock deal will be explained at length hereafter.

Mr. Degge has managed, controlled and dominated all of these companies, and he stated to the inspectors that he was responsible for everything that had been done by them. Mr. Degge has been President and Treasurer and Director of the Association, the Development, the Investment and the Realty Companies, and has had as their other officers and directors chiefly his bookkeeper, Mr. R. R. Fiske, his attorney, Mr. O. A. Erdman, and other employees. Mr. Degge has not furnished the names of the officers and directors of the other subsidiary concerns, neither has he denied that he controls their affairs quite as much as he controls the affairs of the Association and the Development and Investment and Realty Companies. The business of all of them is transacted from his office in Boulder, Colorado. The stock has been sold mostly in small blocks through the mails to individuals throughout the United States, a great
54 many of them located in the East, and those persons by reason of their comparatively small individual interests and distance from the offices of the company, have had no substantial part in the conduct of the business of the companies in which they were interested. Consequently these corporations and their funds have been easy of manipulation, and the advantage that he has taken of this situation proves, I think, that he intentionally brought it about and has maintained it, as he still does, as part of an elaborate scheme to defraud stockholders in the subsidiary companies.

*Profits of the Association on Sale of Wellington Gardens to Subsidiary Companies.*

At about the time of the organization of the Development Company Mr. Degge purchased for the Association about 2,800 acres of dry lands a short distance out of Boulder, Colorado, together with certain water rights with which he proposed to irrigate those lands. The price which the association agreed to pay therefor was $110,000. Mr. Degge states that pending the payment of the full purchase price the deeds for the lands were put in escrow. The deed for the so-called Tyler tract of about 2,400 acres was delivered to him according to his statement on November 24, 1908, and on the same day placed on record. The deed which he exhibited at the hearing was made to himself as an individual. He stated that he had placed on record November 27, 1908, a declaration of trust declaring that he held this land in trust for the Association, the Development and the Investment companies in equal shares. The deed to the so-called Maxwell tract of about 396 acres which he exhibited at the
55 hearing was dated February 13, 1907, and conveyed the land to Mr. Degge as trustee, for the use of the Association, the Development and the Investment Companies in equal shares. This deed was acknowledged February 3, 1908, and was filed for record February 13, 1908. The paper exhibited by Mr. Degge, at the hearing as the assignment to him as trustee of the water rights that ac-

companied the Maxwell purchase was dated February 3, 1908, and recorded on the same day. The price of the Tyler tract he states was $60,000 and that of the Maxwell tract and its water rights $30,000. In addition to these two tracts of land Mr. Degge purchased at about the same time certain water rights known as the Park Reservoir, located, the Inspectors say, about 18 miles west of Boulder, for which he states he paid $20,000. He states he proposes to expend $40,000 on this reservoir to make it available for watering the Tyler and Maxwell tracts. These several properties for which Mr. Degge has paid or agreed to pay $110,000 are the properties which he has designated the Wellington Gardens.

Upon the organization of each the Development and the Investment companies he caused to be sold to each of them an undivided one-third interest in this property. The Development Company he charged for its one-third interest $50,000, and the Investment Company for its one-third interest $75,000. At those dates he had not yet secured title to the properties, the deeds being in escrow until the required payments should be made. Until November, 1908, nothing has been of record to show any interest in the 2,400 acres in any of the companies, or any declaration of any interest in
56 either the Development of the Investment companies in the deed of escrow. The Maxwell deed was not delivered until February, 1908.

At the time that the Development and Investment companies were thus sold these interests Mr. Degge was their president and manager and in full control of their affairs, as he was also of the Association. While he was acting as the agent of stockholders of these subsidiary companies, and in which he had and has but little interest as owner of stock he was at the same time acting as the other party to the transaction in his own interest in representing the Association of which he and his family were and are two-thirds owners. Out of that situation the parent company profited from the auxiliary companies under the same management and to the extent of over $51,000, or in other words it received $15,000 cash and one-third of a $110,000 property for nothing.

Mr. Degge does not deny that it was his intention in the acquirement of the Gardens that the several companies should participate in the transaction, and as a matter of fact he advertised that the Development Company was organized for that purpose, and when the land was acquired by the Association it was in no financial condition to handle the property alone. The Inspectors state that there had been no enhancement of values by reason of work on the property as practically no work was done, and that the only development work done up to as late as June 30, 1908, consisted of the expending of about $15,180.48 on the Reservoirs, of which one-third was charged to the Development Company. Mr. Degge has made no
57 effort to justify these profits from the subsidiary companies in this transaction, except in connection with the claim that he believes that the Gardens will still realize those companies large profits. He states it is his purpose to raise the reservoirs, lay out lateral ditches, plant trees, make other necessary improvements and

dispose of the property in small tracts for fruit raising, truck gardening, etc., and that to the time of the hearing five five-acre tracts at $500 per acre had been sold and payments were being made thereon, that while he does not expect to realize this uniform price for the entire 2,800 acres he believes the average will run close to and may exceed $300 an acre, thus making $840,000 for the whole tract, or $280,000 each to the Development and Investment companies for their interests.

The question of fraud involved here does not concern the prospective value of this land, but only the profiting of the parent company from the subsidiary companies under the same management. Yet, while the future value of this land is, of course, problematical, the Inspectors state that there is serious question as to whether it is of the value claimed that it does not compare favorably with irrigated land that can be bought in that section for much less than $500 an acre, that the land lies at the base of the foothills at a considerable elevation above surrounding lands, and that about 300 acres, according to Mr. Degge, runs up into the foothills above water supply; that much of the entire tract is exceedingly rocky, sections of it being entirely covered with loose rock, that evidently upwards of 100 acres of it is occupied by the reservoirs, that there is considerable of
58 it which cannot be watered, such as crests of buttes, ravines, and creek bottoms, and that information acquired by them from a number of postmasters near Boulder indicates that prices for land in that section that is not under water but capable of irrigation range from $10 to $75; that the price for farming lands under irrigation ranges from $40 to $250 an acre; that the prices of small tracts of truck and gardening lands under irrigation will range from $100 to $1,000 an acre, with the average between $150 and $500, and that information acquired by them from Mr. W. S. Bellman, cashier of the Boulder National Bank, with which Mr. Degge does business, was to the effect that he was familiar with the Wellington Gardens, that he had talked with the son of Mr. Tyler who sold the tract to Mr. Degge, and that in their opinion if Mr. Degge could average $100 an acre for the sale of the Wellington Gardens it would be a pretty big value for the entire tract, and that good farming land broken and under water, east of Boulder and near Longmont, could be bought for him from $100 to $150 per acre, and that such land was better than the Wellington Gardens. Mr. Degge exhibited at the hearing and read to me several letters from persons who stated that they lived near Boulder, that were to the general effect that Mr. Degge should be able to realize from these lands the price he claims to believe he will be able to obtain. These letters were to have been left with me as I at the time understood Mr. Degge's attorney, but I am not able to find that they have been left with the various matters Mr. Degge filed with his answer. One fact that is particularly significant in this connection is that although Mr. Degge has
59 now had this property for about two years, he has done substantially nothing on it so far as irrigation or cultivation is concerned. If it be true that water is available, and that the land can be made to bring such prices as he claims, it is difficult to under-

stand this delay. It tends to excite a suspicion that water is not available in sufficient quantities for this large acreage. Without the water it is admitted that the land is of small value. The Inspectors state that while Mr. Degge has extensively advertised these Gardens for sale, he has been unable to sell any of the land to residents of Boulder or of that section, and up to the time of the investigation has been able to dispose of only three five-acre tracts to non-residents, through advertising, at $500 an acre.

If, however, these lands were of the value that Mr. Degge claims for them, I think it increases, rather than diminishes the fraud involved in his obtaining a one-third interest in this property for his parent company entirely at the expense of the auxiliary companies under the same management. The Association instead of profiting only $50,000 against the subsidiary companies will profit $280,000. It must also be noted that the advertising by means of which Mr. Degge has induced the public to buy the stock of the subsidiary companies, and so enabled him to realize these profits for his association, has been filled with protestations that all of the several companies were sharing equally in the enterprise; that he was representing only "the man who puts up the money"; that his was the fairest and most equitable investment organization in the West, and
60 was different from the others that were run chiefly in the interest of the promoter or management; that there were no promoter's profits, and that lands were not bought at one price and turned in at another but were put in at the exact price paid the original owners, etc., as witness the statements quoted at length on page 49 in connection with the subject of Association Dividends. Mr. Degge has also advertised with reference to those Gardens *the* "these three companies (The Association, the Development and the Investment companies) are purchasing both real estate and mining property jointly and dividing the profits equitably." (Advertisement in "Financial Review" of September 1, 1908.)

Since the investigation and these difficulties have arisen Mr. Degge has offered to stockholders of the Development and Investment companies that the Association would repurchase their respective interests in the gardens at a profit of 10% on the amount that each was charged by the Association therefor. He states that a large number of responses have been received to the inquiries addressed to the stockholders of these companies, and that the response is almost uniformly that those companies should retain their interests. This offer is made in the January-February, 1909 issue of "Success," and the statements made there by Mr. Degge in connection with that offer are significant. He claims such values for the property that anyone giving faith to his statements would scarcely be expected to do otherwise than retain his interest in the property. This offer has been made by Mr. Degge since these troubles arose and undoubtedly to serve his interest in de-
61 fending his actions in relation to this transaction. It is equally as clear that the offer has been made without any real expectation or intention that it should be accepted. The treasury of the Association December 30, 1908, showed cash on hand of

only $3,404.82 and a surplus of only $46,443. To rebuy the properties at 50% profit to each of the subsidiary companies would require an expenditure by the Association of $187,500.

Without attempting to decide the question as to the value of this land or what it may realize for the Development and Investment Companies, because I do not consider it necessary to decide that question in the view I take of the fraud involved in this transaction, it is nevertheless clear from the evidence that there is serious question, and it is doubtful, whether this land is of the value which Mr. Degge claims for it in defending himself of the charge of fraud in the sales to the subsidiary companies. Further, it is at least proven that there has been no such enhancement to the present time as to justify the prices charged the subsidiary companies.

*Profit of Wellington Association and W. W. Degge on Sale of Personal Holdings of Development Co. Stock.*

While Mr. Degge has advertised continuously that there has been no promotion stock in any of his companies, the Wellington Association was given 500,000 shares (one-sixth of entire capitalization) of the Wellington Development Company for four mining claims of a nominal value, the auditor placing no cost to the Wellington Association for such claims. The Wellington Association in April, 1907, also bought of the Wellington Development Company
62 350,000 shares of its stock at 10 cents per share. The public price for this stock at that time was 25 cents (See "Success," March and April, 1907). The Wellington Association also bought an unknown quantity of Wellington Development Company stock from individuals at unknown prices, presumably under 10 cents per share. Of the said 850,000 shares, plus the unknown number bought of the public, the Wellington Association had up to June 30th, last, sold all but 535,444 shares at a net profit to the Wellington Association of $49,746.59 and the 535,444 shares of that stock which it then had on hand had cost the Wellington Association, according to the audit of June 30, 1908, only $37,050.44 or a trifle over 6 9/10 cents per share, or about $16,493.96 potential profit to the Wellington Association on a basis of the minimum price of ten cents per share. In addition to those profits the Wellington Association charged the Wellington Development Company a commission on the sale to itself of the said 350,000 shares and 100,000 shares to Mr. Degge personally of 25%, amounting to $11,250.00 thus making that stock cost the Wellington Association 7½ cents per share instead of the minimum price of 10 cents. It will be seen that the Wellington Association made off of the Wellington Development Company a profit of $77,490.55, more or less, on the manipulation of that stock. Of those sales of Wellington Development Company held by the Wellington Association about 2,200 shares were sold at 10 cents per share, eight or ten small lots were sold at 12 cents per share, and the balance of those sales were about one-half at 15 cents and one-half at 25 cents.

63 Mr. Degge was given personally 500 shares of Wellington Development Company stock and early in 1907 he bought of the Wellington Development Company 100,000 shares of that stock at ten cents, and from the public an unknown quantity of that stock at varying prices, presumably at less than 10 cents (in one case he paid 5 cents and he made an offer in another case of 4½ cents). Of the said 100,500 shares of Wellington Development Company stock purchased of the company by him, and given to him, plus the number of shares purchased by him from the public, he had on November 18th, last, sold all but 3,100 shares. His ledger account showed for that date that he had sold and caused to be issued of that stock held by him personally 113,300 shares. It will be seen that the number of shares he bought of the public were 15,900 plus the number of shares subscribed for but not yet delivered on account of being paid for on the installment plan. The ledger account did not show the prices at which that stock was sold, but as near as could be ascertained all of it was sold at 25 cents per share. Of the said 113,300 shares sold by Mr. Degge the Inspectors found on a separate card index record of the sale of 56,850 shares, or 200 more than half, which record showed that 56,600 shares were sold at 25 cents and only 250 shares were sold at 15 cents. Mr. Degge's profit on the sale of the said 56,850 shares, on the basis of the minimum price of 10 cents per share, were $8,502.50. If the other half of his sales were on the same basis, as they evidently were, his net profits on the sale of his personal holdings of Wellington Development

64 Company stock were $16,970, plus such further gain as he may have made by obtaining his holdings secured from the public at less than 10 cents. Mr. Degge subscribed for his 100,000 shares in January, 1907, at 10 cents; he sold it between March and August of that year at 25 cents; but did not pay the Development Company until October and December, months after he had received his money from the public. At the hearing Mr. Degge made no denial of the charge that he had made such profits from the manipulation of this stock.

Up to June 30, 1908, the Wellington Development Company had sold of its treasury stock, in addition to the said 500,000 shares which it gave to the Wellington Association, 1,850,620 shares for $181,644.00, averaging a little over 10 cents per share, being less than 11 cents. All of the sales of Wellington Development Company stock at 25 cents per share were made from Mr. Degge's personal holdings and the holdings of the Wellington Association, the sales being mostly between March 1, 1907, and August 1, 1907, during which period he did not make any sales of the Wellington Development Company treasury stock.

At the same time that Mr. Degge was filling orders for Development Company stock at 25 cents with the private holdings of himself and the Association instead of the Development Company's treasury stock, his advertisements indicates that he was selling treasury stock for the benefit of the Development Company. There was nothing to show that he and the Association were disposing of private holdings for their large profit and without benefit to the Development Company.

It is quite clear that if he had indicated any such thing he
65 would have been unable to realize such sales. That he advertised in such a way as to cause the impression that the Development Company was to receive the benefit of the funds subscribed by the public, is shown for example by his advertisement in the "Mining Investor" of June 17, 1907, where he represents that the Development Company required the funds expected to be realized from such sales to make large payment on the property, and to this end we are offering our present stockholders and those with whom we have been in correspondence the last opportunity of securing a block of Wellington Development stock at 25 cents a share."

Mr. Degge endeavored to excuse this manipulation of the sales of that stock to the personal benefit of himself and the Wellington Association by saying that the treasury stock was over-subscribed and that it was necessary to sustain the price. However, if it was all sold it was not necessary to sustain the price, and as a matter of fact it was not all subscribed, as on June 30, 1907, after most of the sales had been made at 25 cents, there was on hand in the treasury of the Wellington Development Company 469,980 shares unsubscribed. Also of the 350,000 shares of that stock bought by the Wellington Association of the Wellington Development Company, 325,000 shares were bought as late as April 13, 1907, at 10 cents per share when the public was sending in its subscriptions at 25 cents per share, Degge thus selling that stock to the Wellington Association at 40% of the market price, and in addition charging the Development Company a 25% commission on the sale, really getting for the Wellington Associa-
tion that stock at 7½ cents per share while the public were
66 paying 25 cents per share. Also if it were true, which it was not, that Wellington Development Company stock was over-subscribed, why did Mr. Degge subscribe for the Wellington Association for 325,000 shares on April 13, 1907, and if such stock was really over-subscribed why could not Mr. Degge as President, Treasurer, General Manager and Director of the Wellington Association, have arranged with himself as President, Treasurer, General Manager and Director of the Wellington Development Company to have cancelled such subscription of 325,000 shares on April 13, 1907, especially as neither the Wellington Association nor himself paid the Wellington Development for such purchases until late in the fall of 1907?

In the "Mining Investor" of September 16, 1907, just after Mr. Degge had completed the large sales of Development Company stock for the profit of the Association and himself to the extent of over $75,000, and in an advertisement offering pre-organization stock in the Investment Company at 10 cents, he prominently set forth his photograph and beneath it printed in bold type:

"I have positively never taken one cent of commissions on any transaction of this character, neither have I ever made any side deals for myself. I have given my full time to the interests of the Wellington System and the stockholders in this have shared and will continue to share equally with me in proportion to the interest which they hold.

"This seems a remarkable statement to make. But it is true. And the results are satisfactory to me."

Comment is quite unnecessary. For further quotations of protestations of this tenor, which are to be found throughout the advertisements and circulars of this person, see those quoted in con-
67 nection with the subject of Association Dividends, page 48.

That Mr. Degge is from time to time continuing to buy stock of his subsidiary companies at low prices and reselling same to the general public by this advertising at large profit for himself, is indicated by letter produced at hearing, written by him December 2, 1908, to a Denver stock broker, offering to buy Development and Investment stock at 4½ cents a share, which stock he is now offering to the public in his advertisements at 11 and 12 cents (See "Success," November, 1908, at 11 cents; January-February, 1909, "Success," at 12 cents).

The letter reads as follows:

The Wellington Association.
The Successful Dividend Payer.
W. W. Degge, President.
Home Officer, Boulder, Colorado.

DECEMBER 2, 1908.

A. R. Grover, 171 Boston Building, Denver, Colorado.

GENTLEMEN: I have a purchaser for from one to 5,000 shares of Wellington Development or Investment stock at 4½ cents a share. You are hereby authorized to send me any part of 5,000 shares with draft attached to W. W. Degge care of National State Bank, Boulder, Colorado, if delivered within ten days.

Yours truly, W. W. DEGGE.

Mr. Degge neither denies that he had written or sent this letter nor offered any explanation whatever of it.

68 *Concealment of Loss by Development Company of* $70,000 *on Mammoth Mine and "Fake" Dividend of Development Company.*

At about the time of the organization of the Development Company, Mr. Degge with his associates formed the Wellington Leadville Mining and Leasing Company, for the purpose of acquiring and developing a property known as the Mammoth Mine, situated at Leadville, Colorado. They organized the company with 1,000,000 shares of the par value of $1 each, and distributed the capitalization 600,000 to the Development Company and the remainder to themselves. So far as known none of this stock has been offered for public subscription. The Development Company, as consideration for its 600,000 shares, was to expend as much as might be necessary of $50,000 for the development of the property. A bond to purchase for $89,250, to be paid one-half July 19, 1907, and one-half January 19, 1908, and a lease to work the property for six years, were obtained. None of the payments required by the bond to be

made were ever made, so that no title has ever been secured to the property. The lease contained the provision, among others, that "any failure to work said premises with at least four persons under ground for a total number of ten days may be considered a violation of this covenant; this clause is of the very essence of this contract."

The Development Company spent upwards of $50,000 working the property, when it appearing that further expenditure was still required, Mr. Degge and his associates agreed that they should donate of their holdings 190,000 shares of the Leadville
69 Mining and Leasing Company to the Development Company for it to continue with the development work. Under such agreement the work was continued and the Development Company spent altogether on the property some $71,615.11 (as shown by its records examined by the Inspectors up to about November, 1907, when the property was abandoned). As result of such expenditure by the Development Company about 2,700 of ore was extracted. Such abandonment of the property forfeited the lease. Mr. Degge so admits in his answer to the Inspectors, and his associates and the lessors similarly advised the Inspectors.

While this lease was the only asset of the Leadville Mining and Leasing Company, and its forfeiture thus rendered that stock worthless, Mr. Degge has nevertheless continued since then to claim the stock of this mining company held by the Development Company to be of large value and has earnestly endeavored to keep from the stockholders of the Development Company the facts in regard to the loss; and to deceive them he has carried on the books of the Development Company the Leadville Mining and Leasing Company stock as a substantial asset of the Development Company. In the audit of June 30, is shown a holding of 500,000 shares of this stock at the valuation of $75,000 and a "book profit" on same of $16,884.89. With regard to the value of the shares of these various companies the audit company was careful to say that "we have placed no valuation upon the assets of the books as shown by Mr. Degge's entries." At the time of the investigation in November, 1908, the Inspector called Mr. Degge's attention to the fact that the
70 Development Company had acquired an additional 190,000 shares of the Wellington Leadville Mining and Leasing Company stock which was not accounted for in the audit, and in his subsequent statement dated December 31, 1908, Mr. Degge carried 690,000 shares of this stock at the same price at which the 500,000 shares were carried in the audit of June 30, namely, $75,000. In his magazine "Success" for January, 1909, Mr. Degge publicly advertises that "we are holding the Mammoth up our sleeve until we can get a breathing space in our "expenditures," and that work would proceed as soon as $50,000 could be spared to sink a shaft, and that "it is confidently believed by those competent to judge that when we do this we will open up a million dollar property." Mr. Degge well knew the fraudulent pretenses of such statements, and can have made them for no other purpose than that of attempting to justify his past manipulations and for the purpose of selling more stock in the Development Company to innocent investors.

*Wellington Development Company Dividend.*

Mr. Degge in the early part of 1907 guaranteed in his advertisements and circulars for the sale of Development Company stock, that the Company would pay a dividend in 1907 or that he would buy back from the purchasers of such stock their holdings at the price they had given. With the abandonment of the Mammoth mine in November, 1907, the stock of the Wellington Leadville Mining and Leasing Company became practically worthless as shown before, and instead of bringing into the Development Company (which Company held the stock) a revenue from which to pay a dividend,
71 it had lost to the Development Company over $70,000. As the Development Company had during that time made no earnings except a few hundred dollars received for interest, lot sales, rents, etc. and had incurred expenses greatly in excess of its receipts, it was evident that instead of being able to pay a dividend it was really insolvent, but as Mr. Degge was obliged by his guarantee to pay a dividend or to buy back the stock at the purchase price as stated, he transferred from the Wellington Development Company to the Wellington Association 90,000 shares of such Leadville Mining and Leasing Company stock at 15 cents a share, thus realizing $13,500 from which sum he paid on December 31, 1907, a dividend of one-half a cent per share on the Development Company's Stock, amounting to $11,123.85. He admits this dividend was paid from the sale of stock. Mr. Degge stated to the Inspectors that the 90,000 shares of the Wellington Leadville Mining and Leasing Company stock was transferred from the Development Company to the Wellington Association on September 29, 1907, and the certificates of stock are dated to the same effect. However, the journal and ledger entries of the Wellington Association show that this transfer took place on November 30, 1907, and both Mr. Degge and Mr. Fiske, his bookkeeper, informed the Inspectors that those books were written up daily. It is thus shown that Mr. Degge well knew the illegitimacy of this transaction and attempted to cover up evidence of the same by ante-dating the stock certificates to a time when work was being done on the property.

Mr. Degge in his subsequent advertisements has repeatedly referred to this dividend of the Wellington Development Company as a remarkable record and has continually used it as a reason
72 why investors should buy stock in the Development Company. Examples of such representations are found in the February,
1908 "Success" where was published the following:

"A Dividend Payer of 25 Cents."

"Wellington Development is the Company that broke all records in paying a dividend in the same year it was organized."

and in the June 1908, "Success" where was published the following:

"The most remarkable achievement accomplished by the Wellington System is perhaps the splendid record made by Wellington De-

velopment Company. Within the first year of its organization it paid a dividend of five per cent on the organization price.)"

The fraululency and deception of such representations is patent from the facts above stated.

Mr. Degge's actions in continuing to carry the Leadville Mining and Leasing Stock as a substantial asset of the Development Company, his failure to make known to the stockholders the true facts in the matter, his payment of the fictitious dividend to escape his responsibility to rebuy the stock, and the holding forth of the payment of that dividend as a remarkable achievement, are all plainly studied efforts to conceal the fact of the loss of over $70,000 on the Mammoth Mine, and to so deceive purchasers of that stock and to give color to the general representations that permeate his advertisements concerning the business capacity and ability of the management to produce splendid profits for stockholders.

73 *Claims of Ownership of 2,000 Acres Patented Land at Leadville, Colo., and Venir Group.*

While attempting to develop the Mammoth Mine, Mr. Degge bargained with Mr. Tingley S. Wood, of Leadville, Colorado, to purchase the latter's patented holdings of 2,000 acres in the Leadville district, including Mr. Wood's and the Peters Estate's interests in the Mammoth Mine. The information acquired by the Inspectors from Mr. Wood is to the effect that Mr. Degge was to pay approximately $293,000 in instalments of $10,000 per month, or forfeit previous payments on default; that he paid $10,000 under that agreement on June 10, 1907, and $10,000 on August 10, 1907, and failed to make further payments; and that by the terms of the agreement Mr. Degge thus lost all equity in the lands. From the inception of this proposition Mr. Degge widely advertised the "Leadville holdings" of the Wellington System, consisting of 2,000 acres "acquired by the Wellington Companies";

"Wellington System's new purchase in Leadville";

"A Million Dollar Enterprise";

"The tremendous holdings possessed by this company";

"In one deal acquired almost 300 patented mining properties";

"The value of these assets cannot be questioned";

"2,000 Patented Acres. Newly acquired holdings of the Wellington System";

"Think of the acquisition by one corporation of 2,000 acres of mineral territory in the heart of one of the world's most famous mining districts";

"The fact that these properties are patented enables the Wellington System to hold these individual claims as long as they wish without doing any work";

"A Very Remarkable Prophecy."

It is no exaggeration to say that the properties of the Wellington System at Leadville, admirably situated as they are, should be able

in time to produce a tonnage equal to one-half of the present
74 output of the entire Leadville district, notwithstanding the fact that that camp now produces one-half the tonnage of the great State of Colorado."

These are extracts from advertisements inserted by Mr. Degge in the "Mining Investor," Denver, Colorado, on the following dates: May 17, 1907, June 17, 1907, July 8, 1907, September 2, 1907, September 16, 1907, and October 7, 1907.

A reading of these advertisements plainly shows a studied purpose to make it appear that the Wellington Companies owned these 2,000 acres of patented ground splendidly located in the Leadville mining district, when as a matter of fact their equity was very meager and subject to forfeiture at any time, and was in fact forfeited three months after the first payment was made. Mr. Wood stated that Mr. Degge appealed to him for some piece of ground for the $20,000; that he informed Mr. Degge that he considered that sum as liquidated damages for Mr. Degge's failure to keep his bargain, and refused to convey any property for that consideration; that Mr. Degge then proposed to purchase Mr. Wood's four-fifths interest in the Venir group of patented claims, about 63 acres of undeveloped ground belonging to Mr. Wood and included in the 2,000 acre proposition, and pay $8,000 additional, and that the conveyance was made on payment of this sum.

Mr. James A. Shinn, who acted as Mr. Degge's agent in getting Mr. Wood to sell the Venir group to Mr. Degge for $8,000, in a statement to the inspectors corroborated Mr. Wood's statement that $8,000 was paid for the Venir group and that Mr. Wood refused to consider the $20,000 as part of the purchase price on that group.

75 In contrast with these facts relating to the acquisition of the four-fifths interest in the Venir group, Mr. Degge states, in January-February, 1909 "Success," where he offers Development and Investment Company stock at 12 cents a share, that:

Our Leadville Deal.

We Have a Valuable Property at Leadville Worth All We Have Spent There. We Have Proved Up a Valuable Ore Body from Which We Hope to Make a Million Dollars.

W. W. Degge purchased for the Wellington System about two thousand acres of mineral property, in the Leadville district and made various payments on the same amounting to $28,000 and if he had believed it to be for the best interests of the Wellington System he would have continued those payments and taken up all of that ground, but under the sensible and businesslike contract which he had made he had this big acreage, with the heavy expenditures connected therewith, divided into eight sections and provided a condition wherein whenever he had paid for one of those sections he could take a deed for that section, thereby relieving him of forfeiture on account of not carrying out the entire deal.

When the time came for exercising his rights under the contract, Mr. Degge believed it to be for the interests of the Wellington System

to select what he believed to be the best of these groups and let the others go in order to take care of the infinitely safer and more conservative profit making properties, the 2,800 acres of land around Boulder, and after careful consideration and consultation with the directors of the Wellington System companies he took action and stands responsible for having done so and he has no hesitation whatever in asserting that he is satisfied that every intelligent stockholder in the Wellington System will indorse his action in so doing as time has demonstrated that it is one of the best moves he ever made in his life and he has no apologies to offer to his critics or anyone else for having done what at the time he believed to be right and what time has demonstrated beyond the question of a doubt was right.

Today the Wellington System owns the Venir group of mining claims which Col. James A. Shinn, a mining engineer of many years of experience in the Leadville district, says in his judgment is worth $150,000."

76 Mr. Degge's attorney attempted to show during the hearing that such an agreement or option existed between Mr. Degge and Mr. Wood and upon being asked to produce it stated that he did not have it with him and that "I would not bother myself about sending for the original option and proving that we had an option to get a business property that we actually did get and paid for and got the property." The Government denied the existence of such an option and although Mr. Degge was given two weeks to submit the same, with any other paper he might desire, it has not been produced.

The Inspectors state that both Mr. Wood and Mr. Shinn advised them that the Venir group of claims was undeveloped and of unproven value and that only the work necessary to secure a patent has been done on the property. Mr. Degge at the hearing submitted no evidence to substantiate this published representation that a valuable ore body has been opened up on the claims.

It will thus be seen that the 2,000 acres of patented mining property, "acquired by direct purchase" and "owned outright" by the Wellington System, within a few months dwindled to a four-fifths interest in 63 acres of wholly undeveloped claims or prospects. Nevertheless, during that few months, Mr. Degge spread broadcast by the use of the mails glowing representations of this "Splendid purchase," and it was largely through such representations that heavy sales of Development and Investment stock to the public were accomplished.

Mr. Degge has since sold a one-third interest in the Venir group to each the Development Company and the Investment Company and charged each company therefor $9,333.33.

77 *Profits of Association from Sale of Miscellaneous Mining Claims to Subsidiary Companies.*

The only assets of the Goldfield, Manhattan and Midway Companies are mining claims acquired at their organization through the

Association. Those claims have all failed to produce any revenue and are now closed down, as is admitted. The Association obtained large blocks of stock of the subsidiary companies on account of these properties, from the re-sale of which to the public it has realized large profits.

Mr. Degge organized the Goldfield Company and sold to it from the Association five undeveloped mining claims in Nevada which had been secured at a nominal expense. The Association received therefor 700,000 shares of the 1,500,000 shares which the Goldfield Company was authorized by its charter to issue; and the Association in addition received 120,000 shares as promotion stock without cost, and later bought 100,000 shares for $2,700.00. Of these 920,000 shares so acquired for practically $2,700.00, the Association has realized a profit of $5,372.95 (see page 8).

At the organization of the Manhattan Company Mr. Degge secured for that company three undeveloped mining claims for which the Manhattan Company (capital of 1,000,000 shares at $1 each) paid 300,000 shares to the owners of the claims, 100,000 shares to the agent of the owners for negotiating the transfer, and 300,000 to the Association. To June 30, 1908, the Association had realized from selling to the public from its holdings of this stock a
78 "profit" of $6,496.40 and still had on hand unsold $1,473.90 as one of its "assets." A profit of $3,000.00 is shown in the audit of June 30, 1908, explained as "On promotion of Manhattan Chief Company," which is not definitely understood but is believed to be from the Association's sale of Manhattan stock for its private account.

Mr. Degge organized and promoted the Midway Company on the same basis as the Manhattan, 300,000 shares being given to the owners of six undeveloped mining claims in Nevada, 100,000 to their agent, and 300,000 to the Association, from sales of which the Association listed as a profit on June 30, 1908, $505.00.

In addition to the profits which the Association has made by so acquiring and reselling the stock of these subsidiary companies under the same management, it has further realized a net profit of 25% of the amount paid by the public for treasury stock in each of these companies, the expense of said sales being charged up against said companies (see p. 56). The profits made by the Association from selling its stock of these companies and from its 25% commission compare with the amounts spent on development as follows:

79

| Spent on development work. | Commission. | Stock sales. | Total profit of association. |
|---|---|---|---|
| | Goldfield. | | |
| $11,799.26 | $4,748.22 | $5,372.95 | $10,121.17 |
| | Manhattan. | | |
| 3,968.84 | $2,846.56 | $9,496.40 | 12,342.96 |
| | Midway. | | |
| 1,251.25 | $395.62 | $505.00 | 900.62 |
| $17,019.35 | ..... | ..... | $23,364.75 |

The preponderance of the profits of the Association from the promotion of these companies over the amounts actually spent on development work, clearly proves, I think, that the realization of that profit was the chief incentive for their creation and exploitation.

At the organization of the Development Company Mr. Degge transferred to it from the Association four undeveloped mining claims in Nevada for 500,000 shares or one-sixth of that company's entire capitalization. The audit company could find no appreciable item of expense connected with the acquisition of these properties by the Association, and, treating the exchange made on the basis of the shares being of the value of $1 each, allowed a profit to the Association of $4,995.55, or $5,000 less five directorship shares. As a matter of fact the Association has realized 15 and 25 cents on each of these shares which it has sold, and its real profit on
80 this stock is best shown by the fact that it has received $49,746.59 from the sale to the public of this, with that of other holdings in this Company (see page 20).

At the organization of the Investment Company Mr. Degge transferred to it from the Association five undeveloped mining claims in Nevada for $10,000. The audit company likewise failed to find any appreciable item of expense connected with Association's acquisition of these properties, and consequently stated the entire $10,000 as profit.

At all of these times the parent and auxiliary companies were under the same management.

None of these facts have been in any wise disputed by Mr. Degge.

That Mr. Degge by his advertisements publicly disclaimed repeatedly that any of his promotions were being in any such wise manipulated for the benefit of the management or any inside company, see the quotations in connection with the subject of the Association's dividends, page 48.

*Profits to the Association from Sale of Stock in Goldfield Tri-Metallic Mining Company.*

Mr. Degge secured for the Wellington Association 438,000 shares of Goldfield Tri-Metallic Mining Company stock at a cost of $5,000 (see audit of June 30, 1908, and statement of December 30, 1908). So far as is known the only assets of this Company were and are mining claims of unproven value of Nevada. At the time
81 of the Inspectors' investigation in November, 1908, Mr. Degge had disposed of a one-third interest in this stock to the Investment Company for $10,000. At that time he claimed that the Development Company also owned one-third of this stock, but could produce nothing to the Inspectors to evidence such ownership. Since then, however, and in the statement published by him of December 30, 1908, it is shown that he has sold one-third interest to the Development Company for $5,000.

Mr. Degge sought to justify to the Inspectors the profit of over $8,000 thus obtained from the Investment Company by claiming that the value of the stock had been enhanced by considerable development work. His books, however, failed to show that since the acquisition of the stock by the Association any development work had been done except the expenditure of $880.98. Mr. Degge admitted that no revenue had ever been produced by this property excepting a few hundred dollars of ore for samples. It is admitted that the property is now closed down and the records at Goldfield, Nevada, show that in December, 1907, workmen filed liens against the property aggregating the sum of $1,223.50. At the hearing Mr. Degge's attorney claimed that these liens had been satisfied although they had not been removed of record to save that expense to the Company. Despite Mr. Degge's Admissions with respect to the failure of this property to produce revenue, that it is now closed down, and that liens were filed against it in December, 1907, he has advertised immense values on this property and that it was sacking $225 ore (see "Success," May, 1908).

It will thus be seen that Mr. Degge manipulated this stock
82 in such fashion that his inside corporation recouped its expenditure of $5,000 paid for this stock and obtained a profit of $10,000 from the subsidiary companies under the same management for two-thirds of the stock, and still has one-third of the stock on hand. None of these facts have been disputed by Mr. Degge.

*Association Dividends.*

An inducement prominently advertised and circularized through the mails by Mr. Degge to sell stock in his several subsidiary companies relates to the payment of dividends by the Association. He has persistently advertised that the Association was paying large dividends to induce the purchase of shares in his other promotions where big or greater dividends were promised in the future. These statements are repeated again in the issue of "Success" (the promo-

tion organ sent out in large numbers by Mr. Degge) of November, 1908, in practically the same terms as heretofore, as follows:

As the Wellington Association has made and paid 72 per cent in dividends for its fortunate stockholders in the past four and a half years, paying in that time in actual cash dividends the enormous sum of $58,205, so we believe, by reason of our greater experience and greater capital, we will accomplish greater results and make for every stockholder in the Wellington System bigger dividends in the future.

Another recent example is found in "The Financial Review for November, 1908, published at Saint Louis, Missouri. The advertisement is entitled "The New Way," occupies an entire page,
83 and is devoted to soliciting the public to purchase of stock of the Investment Company at 11 cents a share. The following are some extracts:

11*c. vs.* $1.00.

The Wellington Investment Company is being organized along the lines of the Wellington Association. Wellington Association stock is selling for $1 a share.

The Association has paid 72 per cent in dividends in fifty-three months.

*Another Dividend.*

That's the announcement that pleases your clients and makes them your friends.

That's the announcement that The Wellington Association has made consecutively every quarter since 1904, together with extra dividends at the end of the year.

The Wellington Association will pay regularly quarterly dividends for 1909 as heretofore.

*Another Dividend Payer Organizing.*

The Wellington Investment Company, we believe, will be the best and most profitable investment on the market.

We have the benefit of our experience in our successful dividend payer, The Wellington Association. * * *

If The Wellington Investment Company fails to pay a dividend in 1909 we will purchase your stock back at the price you paid for it. * * *

*The Big Success of* 1908—*The Wellington Investment Company—Interesting and Profitable Reading for Conservative Investors.*

It will well repay the readers of The Financial Review to read carefully these interesting letters and the general information contained on this page. It gives a lot of valuable information about that great "Successful Dividend Payer," The Wellington Association, and its most successful floatation, The Welling- Investment Company.

The Wellington Association paid its first dividend January 1st, 1904. During the four years since that time it has never once failed to pay a regular quarterly dividend, with an extra dividend at the end of the year, making a grand total of 72 per cent paid in four years.

The Wellington Association has long since passed the experimental stage. It is a safe, conservative dividend payer with no desire to sell any more of its stock, having sufficient money to handle its splendid business. As it is selling no stock, it is absolutely free from that ever-ready criticism or paying dividends out of receipts from the sale of stock.

*The Coming Dividend Payer.*

Having successfully launched the Wellington Association and brought it to that point where it is universally known as "The
84 Successful Dividend Payer," we are now making the most successful floatation of the Wellington Investment Company ever accomplished in Colorado.

In sixty days we sold a million shares of stock and have more than one hundred thousand dollars coming in for development purposes. Having splendid properties to develop, this means that success is assured for The Wellington Investment Company.

*Get in With the Winners.*

Today presents to you the opportunity to get in with the winners.

Today you can get Wellington Investment stock for 11 cents a share.

Later it will cost you 50 cents or $1.00.

* * * * * * *

We hope to make the business of The Wellington Investment Company so plain that the most thoughtless investor can understand and appreciate the fact that this company is doing to do mining on a legitimate and money-making basis.

The stockholders and clients of The Wellington Association have for four years seen the splendid work accomplished by The Association and are therefore best educated to quickly take advantage of this splendid opportunity to begin at the beginning and get in with the organizers at the very low price of 11 cents a share on a stock which carries with it such evidences of safety as enables it to either assure dividends for 1909 or else refund your money.

You have seen what The Wellington Association has done and is doing, what it assures its stockholders it will do for 1909. We have every reason to believe The Wellington Investment Company will do as well or better.

* * * * * * *

*A Truly Co-operative Company.*

Thus The Wellington Investment Company will be a truly co-operative company, giving the Eastern invester who puts up his money, an even show with the man on the ground, thus practically assuring success for all.

While The Wellington Investment Company will develop extra good prospects, or spend the necessary money to prove up such prospects, its principal business will be the handling of good properties with ore already in sight.

Like The Wellington Association, The Wellington Investment Company will be run in the interest of its stockholders, they being the promoters, and every share of stock being placed in the treasury.

* * * * * * *

*Its Special Attractiveness.*

The Special attractive features of The Wellington Investment Company may be summed up as follows:

1. It will be engineered and pushed to success by the same management that has made "The Successful Dividend Payer"
85 of the Wellington Association.

* * * * * * *

*Get in With the Winners.*

Begin with the beginners.

Remember: The Wellington Association is backing this stock. The Association has never failed to pay regular quarterly dividends since January, 1904, in which time it has paid 72 per cent. It will pay regular quarterly dividends in 1909. This stock is selling at $1 a share.

* * * * * * *

Why throw your money away on wild cats when you can get in a safe, profitable Investment Company at the bottom price of 11 cents a share.

The Wellington Association has paid regular quarterly dividends since January 7, 1904, a total of 72 per cent, amounting in actual cash distributed to its fortunate stockholders of $58,205.55.

I refrain for the sake of brevity from quoting more at length representations of this kind. They appear throughout the advertisements and circulars, from the commencement of the sale of these stocks to this date. The above I think are sufficient to show the nature of these representations.

Practically all of the profits which are reported in the audit of the Continental Audit Company to have been received by the Association, and with which these dividends have been paid, have been secured only by Mr. Degge's manipulations of the subsidiary companies. The audit furnished the following particulars:

| | | |
|---|---|---|
| Total profits from all sources to June 30, 1908..... | | $227,348.25 |
| Profits diverted by Association from public's payments to treasuries of subsidiary companies (per table on page 6) ..... | $130,321.00 | |
| Profits of Association by selling stocks of subsidiary companies for its private account (per table on p. 6)..... | 68,328.99 | |
| Rents from property, and other small items ..... | 17,452.54 | |
| Dividends on stock of subsidiary companies held by Association..... | 11,245.72 | |
| | | $227,348.25 |

While acting as the head and managing each of the subsidiary companies, and at the same time acting as head of the Association and managing its business, he has so conducted the business of these various concerns as to impoverish each and all of the subsidiary companies and enrich his inside corporation to his own great benefit. And this despite his continuous and persistent claims of equity, fair dealing, equality, and coöperation among all of the companies comprising what he so fondly calls his "System" and the "New Way." The fraud and deception involved in this scheme of inducing the public to invest in the subsidiary companies by holding forth the dividends of the Association to show that the other companies ought to and could enjoy similar success, when in fact those dividends of the Association and that success were not derived from legitimate earnings but were instead derived almost wholly from the fraudulent diversions of the money paid by the public to the subsidiary companies to the enrichment of the Association, and from the private manipulations of the stocks of the subsidiary companies to the Association's great profit, is of course obvious. At the same time that Mr. Degge was thus enriching the Association and himself at the expense of the subsidiary companies, his advertisements to the public were filled with loud and persistent representations that his
87 organization was the fairest and most equitable in the West, that his was "New Way" entirely different from other Western promotions in that while those were conducted in the interest of the promoter or an inside company, his was run strictly in the interest of the man who put up the money; that his "System" was conducted without any special schemes or deals to enrich the promoter against the investor; that no one company was taking any advantage of any other but that all were working harmoniously together, assisting, coöperating and helping each other as "partners," etc. A few extracts taken from the advertisements are quoted below:

The Financial Review, September 1, 1908:

The Wellington System is composed of three active companies, viz: The Wellington Association, The Wellington Development Company and the Wellington Investment Company. These three

companies are purchasing both real estate and mining properties jointly and dividing the profits equitably.

The Wellington System may be described in the following short paragraph:

The Wellington System is the fairest and most equitable investment company in the West.

Every share of stock placed in the treasury—properties turned in at the actual price paid original owner.

* * * * * * *

An organization that represents first, last and all the time "the man who puts up the money."

Recognizes no grafting influence but demands a full dollar's value for every dollar paid.

Circular letter dated July 25, 1908, headed "A Personal Tip to Loyal Leaguers":

The Wellington System represents the highest ideal of fairness and equity to each and every stockholder, large and small.

It means the placing in the treasury of every share of stock, with each and every investor, whether he be large or small, having the opportunity of securing it at the same price as the officers and directors.

It means the elimination of promotion extravagances, so far as any individual having an unfair advantage over his fellow stockholders, and the conservation of all profits for all stockholders.

It means turning in to The Wellington System properties at original cost, with no graft for officers or directors but all
88 profits for the stockholders.

Rocky Mountain News, July, 1908:

The fundamental principle on which Mr. Degge founded The Wellington System was this simple rule alone: It was a deep-set determination to allow the investor to share in every form of profit which it is possible for the promoter to make. * * * The Wellington way is to share the profits with every individual stockholder. * * * There was no promoter's rake-off other than that shared by the stockholders in the several corporations.

Success, April, 1908:

The strongest statement ever made by a promoter: I pledge you my word of honor as a man that I have arrived at that point in the promotion business where my desire to build up the fairest, most equitable and ablest conducted investment business in the West, and to honestly and earnestly represent the man who intrusts me with his money, is infinitely greater than the desire to make a few dollars for myself. * * * Neither did I receive one share of promotion stock from either of those companies, but bought and paid for all the stock I have in those companies on the same basis as the smaller stockholders in the company.

Daily Mining Record, January 18, 1908:

The big feature of the entire Wellington System is that no one corporation can detract from another.

Mining Investor, September 16, 1907:

This is the principle which President Degge has applied to the Wellington System: He has taken his profits only on the same basis as other shareholders.

Mining Investor, April 9, 1906:

The Wellington Association has no special deals, no blind pools, no special schemes. The management represents the Association in and out of season. Our every effort is given to upbuilding the Association.

Daily Mining Record, April 13, 1907:

Mr. Degge's success is consequent to the success of his companies, for there is no rake-off or fat blocks of promotion stock to go into his private safe. Here we have the square deal ideally carried out.

The facts stated in this memorandum show that these and like statements contained in the advertisements and circulars of this person are absolutely false, and made fraudulently with intent to deceive and defraud those foolish enough to give them faith and act thereon.

89 At the hearing, when these facts were brought out against him, Mr. Degge made no denial of them. He scarcely attempted any explanation or justification, except in connection with his general plea that despite the profits he has secured from the subsidiary companies he believes the properties which he has sold them will still produce a profit.

The precise share of the dividends of the Association that have been received by Mr. Degge and his family is not known, nor has Mr. Degge offered to advise me, neither has he done so. As nearly as it can be figured, it is at least approximately $20,000.00, as will appear from the following:

The audit of the Continental Audit Company shows that 39,700 shares of preferred stock were issued at the organization, and that up to June 30, 1908, 115,720 shares of preferred stock had been issued at par, $1, making a total of 155,420 shares then outstanding. On November 18, 1908, Mr. Degge advised the Inspectors that there were then outstanding 156,020 shares of preferred stock. He further stated that the preference of the preferred stock was that it was entitled to 12 per cent dividends before the common stock received anything for five years from the organization of the company, or through the year 1909, after which time the common and preferred stock would share equally in any dividends that might be paid. While dividends of more than 12 per cent per year have been paid, Mr. Degge stated at the hearing that none of the common stock, all

90 of which that has been issued is held by his wife, has participated in dividends. The dividends distributed up to June 30, 1908, amounted to $58,205.55, and if either 155,420

or 156,020 shares participated the dividend would be only a little in excess of 37 per cent against the 72 per cent persistently advertised to induce the purchase of shares in other promotions. Mr. Degge, however, claimed to the Inspectors that preferred stock was sold to the public on the installment plan and did not participate in dividends until fully paid for. The Inspectors requested Mr. Degge to furnish them with a statement showing the number of shares that participated in each dividend, but he declined to do so on the ground that his records were in such condition that to do so would require expenditure of considerable time. If it be assumed that the aggregate dividends paid by the Association up to the Fall of 1908 have been 72 per cent on the preferred stock of the Association that participated as advertised, then the dividend received by Mr. Degge and his family on their 31,250 shares of preferred stock has been greater than would appear from the statement that the outstanding preferred stock is either 155,420 or 156,020 shares, but he has instead received at least $18,000 on the 25,000 shares that have been held since the organization, and depending upon the time that he and his family have secured the other preferred stock which now makes their holdings aggregate 31,250 shares, has received upwards of $22,500.

When it was stated at the hearing that the portion of the dividends received by himself and family aggregated at least these
91 amounts, Mr. Degge neither denied it nor offered to show what he actually has received. His attorney instead merely argued that the fact that Mr. Degge did not take it all himself, but instead divided it with the others to whom he had sold Association stock, showed absence of intent to defraud. The answer, I think, is plain, that Mr. Degge's plan to enrich himself through the Association from the subsidiary companies either came to him after he had organized and sold some stock in the Association, or else he feared to transfer the profits direct to himself as an individual and sought to make the diversion to himself indirect and only partly to his benefit, so as to render his purpose difficult of proof and he perhaps apprehended more easy to defend.

In addition to his dividends on stockholdings, Mr. Degge each month pays to himself from the Association a salary of $250.00.

Since the audit of June 30, 1908, which showed dividends paid amounting to $58,205.55, the statements published by Mr. Degge in his January-February, 1909, issue of "Success" show that the Association paid a dividend of $6295.30 the last half of 1908, and declared on December 31, 1908, a dividend of $7,820.00 "paid January 10, 1909." These dividends are announced with great flourish of trumpets calculated to inspire further investments in stock of the subsidiary companies. The dividend of December 31, however, was "paid January 10, 1909" (although the announcement in "Success"
does not so state) in "scrip," payable December 31, 1909, "or
92 receivable as cash at any time as payment on account of stock or lands purchased from the Wellington System at the Advertised Price."

*Cost of Financing Not in Excess of 25%, and 75% Invested for Benefit of Purchasers of Stock.*

Another inducement advertised prominently concerns the claim that Mr. Degge finances companies promoted by him at a cost of 25 per cent, and that the other 75 per cent is judiciously invested for the benefit of stockholders, three-fourths in real estate propositions and one-fourth in mining enterprises. He has always made a considerable feature of this, advertising it as a great superiority of his system over others and perpetually holding it out as an inducement to the public to invest in his promotions. Examples of these representations are found in the following extracts:

Success, November, 1908:

By reason of the great confidence which the investing public generally has shown in the Wellington System, we have been enabled to finance these companies at a total cost of 25 per cent, said 25 per cent covering every possible expense, including salaries of clerical help, advertising, printing, office rent, postage, and every possible expense.

Financial Review, September 1, 1908:

Instead of charging from 40 to 75 per cent for financing companies, the Wellington System, by reason of its capable management, its fairness and equity to its stockholders, is enabled to finance its companies at the remarkably low cost of 25 per cent.

The Wellington System provides for the investment of 75 per cent of all the money received for stock in safe real estate investments and irrigation enterprises. * * * The remaining 25 per cent is used intelligently in securing and developing the very best mining properties.

In regard to the cost of financing the promotions made by Mr. W. W. Degge, the audit of the Continental Audit Company furnished the following particulars:

93 *Wellington Association.*

| Money raised. | Expense of raising. | |
|---|---|---|
| $115,720.00 | Expense | $26,722.77 |
| | Salaries | 17,284.95 |
| | Advertising | 59,520.05 |
| | Commission | 8,945.98 |
| | Rent | 15.50 |
| | | $112,489.26 |

Percentage of Cost, 97%.

*Wellington Investment Co.*

| Money raised. | Expense of raising. | |
|---|---|---|
| $78,058.00 | Expense and incorporation | $110.00 |
| | Commissions, 25% to Association | 15,611.60 |
| | | $15,721.60 |

Percentage of Cost, 20%.

*Wellington Development Co.*

| Money raised. | Expense of raising. | |
|---|---|---|
| $181,644.00 | Expense | $1,097.70 |
| | Commissions, 25% to Association | 45,411.00 |
| | | $46,508.70 |

Percentage of Cost, 25%.

Money raised by the three companies of the "System," $375,422.00, at aggregate cost of $174,719.56, or from 46% to 47%.

It will be noted that no advertising expense is charged against the Wellington Investment Company or the Wellington Development Company, although this item is found charged against every other company. Both the Investment and the Development companies were heavily advertised and circularized. This cost, therefore, must be comprehended in the item included under "Advertising, $59,520.06" charged against the Association. Consequently the average cost of financing the several companies of the system is from 46 to 47 per cent, as against the advertised statement of Mr. Degge that it is not over 25 per cent.

94 The other companies included in the audit have been financed at a cost of from 63 to 139 per cent, as follows:

| Amount raised. | Expenses of advertising by which stock was sold, all borne by subsidiary company. | | 25% commission to Association for selling stock, clear of expenses. | Total cost of raising. |
|---|---|---|---|---|
| | *Goldfield Mining Company.* | | | |
| $18,992.90 | Expense ..... | $5,174.71 | $4,748.22 | $15,479.60 |
| | Advertising..... | 5,556.67 | | |
| | | $10,731.38 | | 81% |
| | *Manhattan Chief G. M. Company.* | | | |
| $11,386.25 | Expense..... | $1,320.58 | $2,846.56 | $7,181.94 |
| | Advertising ..... | 3,014.80 | | |
| | | $4,335.38 | | 63% |
| | *Midway Mines and Town Company.* | | | |
| $1,582.50 | Expense..... | $1,020.42 | $395.62 | $2,192.44 |
| | Advertising..... | 776.40 | | |
| | | $1,796.82 | | 137% |
| | *Realty Company.* | | | |
| $2,750.00 | Expense..... | $2,640.54 | $687.50 | $3,818.31 |
| | Advertising..... | 490.27 | | |
| | | $3,130.81 | | 139% |
| $34,711.65 | | $19,994.39 | $8,677.90 | $28,672.29 |

From this it will be seen that it cost the subsidiary companies $28,672.29 to raise $34,711.65 for their treasuries, or a percentage of about 82%.

Mr. Degge's attorney stated for him at the hearing that
95 when Mr. Degge advertised that the cost of financing the
Wellington promotions was not in excess of 25% he did not
— have in mind these earlier promotions but intended the statement to the cases of the Development and Investment companies. No such qualification, however, is to be found in the published statements.

In the cases of the Development and Investment companies the Association's commission included the expenses of selling the stock, but in all other instances the Association has charged all the expenses of the sale up to the subsidiary company and in addition taken 25% of the total amount raised as its net profit, despite the

fact that both the parent and the subsidiary companies were under the same management, and despite the protestations that there were no promoters' special deals or schemes and that the investor shared in every profit open to the management, etc. All these earlier companies were projected on undeveloped mining claims sold by the Association at a profit to the auxiliary company, and all of these properties have so far failed to develop any paying ore and are now closed down, as admitted by Mr. Degge's attorney at the hearing. Consequently these concerns have never been a source of profit to any one except to the Association, which exhausted the great share of the money raised for its expenses and commissions and left but an insignificant amount with which to develop the properties, which facts prove, I think, that the companies were created and manipulated chiefly for the profits the Association could derive from their promotion.

That 75 per cent of the public's investment in the subsid-
96 iary company has not all been invested for its benefit in lands and mines as claimed, is apparent from the facts heretofore stated. The audit shows that of the $246,713.65 paid by the public to the treasuries of the subsidiary companies, $130,321.00 has been diverted to the Association as "profits," and that of some $120,778.99 received by the Association and Mr. Degge from the public for stock bought by them of the subsidiary companies and resold to the public for their private benefit and profit, they paid to the subsidiary companies but $36,450.00 ($47,700.00 less the 25% commission charged the Development Company as previously shown) and retained all of the remainder for their private profit.

*Mining Investments Successful.*

To inspire confidence in his capacity to earn large profits and thus induce the public to invest in his various promotions, Mr. Degge advertises that his mining ventures have been splendid successes,—for example, the following extracts:

Financial Review, September 1, 1908:

Some years ago this enterprise was conceived by Mr. Degge. It was the original intention to enlist the money of the stockholders in mining properties. Not the theoretical and visionary claims of the over-enthusiastic prospector, who always sees in his own little hole in the ground the Eldorado of the world, but in claims and mines in actual operation and which had actually proven their value, and which only needed a little money to become dividend payers.

Several valuable properties were secured and the dividends, after
all, the one great test, began to roll into the pockets of those
97 who had become a part of the great Wellington System. The stockholders were perfectly satisfied with the returns they were getting, but Mr. Degge was not. He wanted to see it come faster. Mines were all right, but the money came too slow to suit him. He looked around for other fields, and found what he sought in real estate investment.

So Mr. Degge launched into real estate. But he did not quit the mining business. Today his system owns much valuable land in several of the Nevada mining districts.

The Mining Investor, July 8, 1907:

The Wellington System owns outright some of the most substantial mining interests in Nevada and Colorado. These are from time to time yielding splendid profit to the shareholders.

At the hearing the Inspectors stated that so far all of Mr. Degge's mining ventures have been total failures and all are now closed down, and that "Mr. Degge stated to us (the Inspectors) that he had never promoted or been connected with any mining enterprise that has produced sufficient revenue to pay the cost of development; that only two such mines, his recent ventures, had ever produced any ore, one—the Mammoth—producing after an expenditure of $71,615.11 ore of a gross value of about $2,700.00, and the other—the Tri-Metallic Co., of Montezuma, Nevada,—producing only a few hundred dollars' worth of samples, and that practically all the money put into mining companies promoted or managed by him had been lost to investors." The Mammoth mine was abandoned the Fall of 1907, and the Tri-Met*t*al-ic has now closed down, and about a year ago workmen's liens were filed against it, Mr. Degge's attorney, however, stated these liens have been paid off, although not removed of record to save that expense. The only assets of the Goldfield, Manhattan and Midway companies are the Nevada mining
98 claims which were sold to each of these companies at the time each was organized under the plan related on page 37. At the time these properties were so acquired by each of these subsidiary companies they were undeveloped claims. They were not "claims and mines in actual operation and which had actually proven their value, and which only needed a little money to become dividend payers," and it is not true that "dividends, after all, the one great test, began to roll into the pockets of those who had become a part of the great Wellington System." So far as shown these properties have never earned anything, nor shown any value, and are now closed down. None of these facts were denied by Mr. Degge at the hearing.

The mining claims sold by the Association to the Development and Investment companies at the time of their organization were likewise undeveloped or prospect properties which so far have produced no revenue whatever. At the hearing Mr. Degge made no endeavor to show value in any of these particulars, or that the above statements are not in all respects correct.

The statement in the "Mining Investor" of July 8, 1907, that "the Wellington System owns outright some of the most substantial mining interests in Nevada and Colorado" and that "these are from time to time yielding splendid profit to the shareholders" are absolute untruths. No mining property ever held by any of these various companies has ever produced for them, nor are they doing so now, "splendid" or any other kind of "profits," but all

have been non-producers. To say that these properties are
99 among "the most substantial mining interests in Nevada and Colorado" is without the slightest foundation of fact. Mr. Degge has not attempted to controvert any of these facts. The only profits that have come out of these properties have been the profits taken by the Association on their sale to the subsidiary companies and from selling the stock of the subsidiary companies.

*Deals Disclosed.*

In his defense at the hearing Mr. Degge claimed that the facts in regard to the profits taken by the Association from the Development and Investment companies in the Gardens transaction, and the fact that the Association has charged the subsidiary companies 25% brokerage fees for selling their stocks, have been published to his investors. He was requested to refer to the specific statements published by him to that effect. In answer to that request he referred to the issues of his promotion magazine, "Success," of February, May, June, August and November, 1908, and February and April, 1906, and July and December, 1905, and to an undated circular entitled "Today." With the exception of statements published in 1908 when disclosure was made of these deals by certain mining papers of Denver between the publishers of which and Mr. Degge bitter controversy had arisen, the true facts in regard to his manipulation of the subsidiary companies to the profit of his inside company have not been revealed but have been carefully concealed and the con-
100 trary repeatedly claimed. Such statements as Mr. Degge has been forced to make by the controversy mentioned have been put forth in such vague and evasive manner as to be calculated to confuse rather than enlighten the average investor in his promotions. Particularly is this illustrated by the fact that he has published the audit of the Continental Audit Company as a complete "vindication," when in fact that audit, intelligently analyzed, reveals his enrichment of his inside company, the Association, at the expense of the subsidiary companies.

*Mr. Degge's Reputation.*

In answering these charges Mr. Degge has sought to show that he is a man of standing and good reputation. The records of this Department show that in January, 1898, Mr. Degge was removed from the position of Postmaster at Norfolk, Virginia, for embezzlement of $5,523.24 of the funds of that post office. Of that amount his sureties were obliged to pay $4,864.98. The defalcation was made good to the Government and Mr. Degge was not prosecuted. He thereupon moved to Colorado and since then, the Inspectors state, has been engaged in such promotions as are here shown.

No effort has been made in the preparation of this memorandum to cover all the business transactions of these various companies, nor to state the probable values of all the properties which Mr.
101 Degge has accumulated in the course of these promotions. To do so would extend this memorandum to unnecessary

length. The effort has been to state as briefly as possible, and yet with sufficient fullness to outline clearly the character of the matters touched upon, the chief manipulations and transactions of Mr. Degge in the furtherance of what it is believed has been a fraudulent scheme conceived and operated by him. Consequently this memorandum should not be understood as covering everything that has transpired with relation to these companies.

Any argument on the facts in this case seems uncalled for. Their reading irresistibly forces the conviction, I think, that in the matters here described Mr. Degge has conceived and conducted an elaborate scheme to defraud the stockholders of his subsidiary companies and to enrich himself and his inside company, the Wellington Association, (greatly to his benefit) by securing and maintaining control of the management of the affairs of all of the various companies in his hands, and using that situation for the purpose of carrying through the deals and manipulations calculated to enrich himself and his Association at the expense of the stockholders of the subsidiary companies.

I find that said W. W. Degge, under his own hand and also under the several names of Wellington Association, Wellington Development Company, Wellington Investment Company, and Wellington System, is engaged in operating and conducting a scheme for obtaining money through the mails by means of false and fraud-
102 ulent pretenses, representations and promises, in violation of Sections 3929 and 4041 of the Revised Statutes of the United States, and I recommend that a "fraud order" be issued against said W. W. Degge, the Wellington Association, the Wellington Development Company, the Wellington Investment Company, and the Wellington System, and their Officers and Agents as such, at Boulder, Colorado.

R. P. GOODWIN,
*Assistant Attorney General.*

103 Supreme Court of the District of Columbia.

MONDAY, *December* 20, 1909.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * * * *

At Law. No. 52210.

MYTTON MAURY, THOMAS E. IRVINE, O. J. WATROUS, JOHN A. Webber, J. R. Anders, W. J. Marion, O. M. Webster, C. S. Clason, A. S. Stewart, H. C. Sargent, F. E. Ray, Sarah H. Woolston, John A. Thompson, W. T. Marsh, and 1340 Others, Petitioners,

vs.

FRANK H. HITCHCOCK, as Postmaster General of the United States, Respondent.

Now come here as well the petitioners by their Attorney Mr. O. A. Erdman, as the respondent by his Attorney Mr. D. W. Baker, U. S.

Attorney; whereupon, this cause comes on to be heard upon the petition, rule to show cause, and answer of respondent, and having been argued and submitted, it is by the Court ordered that said rule to show cause be, and it is hereby discharged, the petition dismissed, and that the respondent recover against said petitioners, the costs of his defense, to be taxed by the Clerk, and have execution thereof.

From the foregoing the petitioners, by their Attorney in
104 open Court, note an appeal to the Court of Appeals of the District of Columbia, and, upon motion, the penalty of the bond for costs on said appeal is hereby fixed in the sum of one hundred dollars ($100).

*Memorandum.*

December 21, 1909.—Appeal bond approved and filed.

*Directions to Clerk for Preparation of Transcript of Record.*

Filed December 21, 1909.

In the Supreme Court of the District of Columbia, the 21st Day of December, 1909.

At Law. No. 52210.

MYTTON MAURY et al.
vs.
FRANK H. HITCHCOCK, etc.

The Clerk of said Court will prepare transcript for District of Columbia Court of Appeals, including all papers in the case, omitting exhibit "A" attached to petition, containing list of names of petitioners.

O. A. ERDMAN,
*Attorney for Petitioners.*

105 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 104, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 52210 at Law, wherein Mytton Maury, et als. are Petitioners and Frank H. Hitchcock, as Postmaster-General of the United States is Respondent as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the

seal of said Court, at the City of Washington, in said District this 7th day of February, A. D. 1910.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

106 In the Court of Appeals of the District of Columbia.

At Law. No. 2115.

W. W. DEGGE et al., Appellants,
vs.
FRANK H. HITCHCOCK, as Postmaster General, Appellee.

At Law. No. 2116.

MYTTON MAURY et al., Appellants,
vs.
FRANK H. HITCHCOCK, as Postmaster General, Appellee.

*Stipulation.*

It is hereby stipulated and agreed by and between counsel for the appellants and the appellee, respectively, in the above entitled causes, that the said causes may be consolidated for hearing and argument in this Court, and that one set of briefs shall suffice for the two causes.

WALTER B. GUY,
*Attorney for Appellants.*
DANIEL W. BAKER,
*U. S. Att'y, D. C.,*
REGINALD S. HUIDEKOPER,
*Ass't U. S. Att'y, D. C.,*
*Attorneys for Appellee.*

(Endorsed:) Nos. 2115 & 2116. W. W. Degge et al., Appellants, vs. Frank H. Hitchcock, as Postmaster General, and Mytton Maury et al., Appellants, vs. Frank H. Hitchcock, as Postmaster General. Stipulation to hear together. Court of Appeals, District of Columbia. Filed Mar. 1, 1910. Henry W. Hodges, Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2116. Mytton Maury et al., appellants, vs. Frank H. Hitchcock, as Postmaster General of the United States. Court of Appeals, District of Columbia. Filed Feb. 7, 1910. Henry W. Hodges, clerk.

Tuesday, April 5th, A. D. 1910.

No. 2115.

W. W. DEGGE, THE WELLINGTON ASSOCIATION, a Corporation; The Wellington Development Company, a Corporation, and The Wellington Investment Company, a Corporation, Appellants,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States,

and

No. 2116.

MYTTON MAURY, THOMAS E. IRVINE, O. J. WATROUS, JOHN A. WEBBER et al., Appellants,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States.

The argument in the above entitled causes was commenced by Mr. O. A. Erdman, attorney for the appellants.

Wednesday, April 6th, A. D. 1910.

No. 2115.

W. W. DEGGE, THE WELLINGTON ASSOCIATION, a Corporation; The Wellington Development Company, a Corporation, and The Wellington Investment Company, a Corporation, Appellants,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States,

and

No. 2116.

MYTTON MAURY, THOMAS E. IRVINE, O. J. WATROUS, JOHN A. WEBBER et al., Appellants,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States.

The argument in the above entitled causes was continued by Mr. O. A. Erdman, attorney for the appellants, and by Messrs. R. S. Huidekoper and D. W. Baker, attorneys for the appellee, and was concluded by Mr. O. A. Erdman, attorney for the appellants.

In the Court of Appeals of the District of Columbia.

No. 2116.

MYTTON MAURY et al., Appellants,
vs.
FRANK H. HITCHCOCK, Postmaster General.

*Opinion.*

(Mr. Chief Justice SHEPARD delivered the opinion of the Court.)

The petition for certiorari in this case was filed for the purpose of bringing up for review the same proceedings and decision of the Postmaster General as in the preceding case of Degge et al., vs. Hitchcock No. 2115. The petitioners allege themselves to be stockholders and directors in the several corporations that are petitioners in No. 2115.

It is unnecessary in view of the disposition made of the appeal in No. 2115, to consider whether the stockholders of a corporation can have any recognition in a Court of Law of the right to complain of injury to the corporation. The same matters having been presented in the petition of the several corporations and their president and manager, Degge, and having been determined adversely to them, nothing remains but to affirm the judgment appealed from in this case with costs. It is so ordered.

Affirmed.

Tuesday, May 10th, A. D. 1910.

April Term, 1910.

No. 2116.

MYTTON MAURY, THOMAS E. IRVINE, O. J. WATROUS, JOHN A. WEBBER et al., Appellants,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause, be, and the same is hereby, affirmed with costs.

Per Mr. CHIEF JUSTICE SHEPARD,
May 10, 1910.

Thursday, October 6th, A. D. 1910.

No. 2116.

MYTTON MAURY, THOMAS E. IRVINE, O. J. WATROUS, JOHN A. WEBBER et al., Appellants,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States.

The motion for the allowance of a writ of error and appeal to the Supreme Court of the United States in the above entitled cause was submitted to the consideration of the Court by Mr. W. B. Guy of counsel for the appellants in support of motion.

Thursday, October 6th, A. D. 1910.

No. 2116.

MYTTON MAURY, THOMAS E. IRVINE, O. J. WATROUS, JOHN A. WEBBER et al., Appellants,
vs.
FRANK H. HITCHCOCK, as Postmaster General of the United States.

On consideration of the motion for the allowance of a writ of error and appeal to the Supreme Court of the United States in the above entitled cause, It is by the Court this day ordered that an appeal be and the same is hereby denied. And it is further ordered that the writ of error issue as prayed, and the bond for costs is fixed at the sum of three hundred dollars.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Mytton Maury, Thomas E. Irvine, O. J. Watrous, John A. Webber, et al., Appellants, and Frank H. Hitchcock, as Postmaster General of the United States a manifest error hath happened, to the great damage of the said appellants, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable John M. Harlan, Associate Justice of the

Supreme Court of the United States, the 6th day of October, in the year of our Lord one thousand nine hundred and ten.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

Allowed by

——— ———.

(*Bond on Writ of Error.*)

Know all Men by these Presents, That we, Mytton Maury, as principal, and The United States Fidelity & Guaranty Co., as surety, are held and firmly bound unto Frank H. Hitchcock, as Postmaster General of the United States in the full and just sum of Three hundred (300.00) Dollars to be paid to the said Frank H. Hitchcock as Postmaster General of the United States, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to *to* be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this eighteenth day of October, in the year of our Lord one thousand nine hundred and ten.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said Court, between Mytton Maury, et al., and Frank H. Hitchcock, as Postmaster General of the United States, numbered 2116 on Docket a judgment was rendered against the said Mytton Maury, et al. and the said Mytton Maury et al. having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Frank H. Hitchcock as Postmaster General of the United States citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, That if the said Mytton Maury et al. shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

MYTTON MAURY, [SEAL.]
THE UNITED STATES FIDELITY & GUARANTY CO., [SEAL.]
By GEORGE O'DONNELL, [SEAL.]
*Attorney in Fact.*

[Seal of the United States Fidelity & Guaranty Co.]

Sealed and delivered in the presence of—
GEO. W. PEENE.

Approved by—
SETH SHEPARD,
*Chief Justice Court of Appeals of the District of Columbia.*

[Endorsed:] No. 2116. Mytton Maury, et al., appellants, vs. Frank H. Hitchcock as Postmaster General of the United States. Bond on Writ of Error to Supreme Court U. S. Court of Appeals, District of Columbia. Filed Oct. 25, 1910. Henry W. Hodges, clerk.

UNITED STATES OF AMERICA, *ss:*

To Frank H. Hitchcock, as Postmaster General of the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Mytton Maury, Thomas E. Irvine, O. J. Watrous, John A. Webber, et al., are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this 25th day of October, in the year of our Lord one thousand nine hundred and ten.

SETH SHEPARD,
*Chief Justice of the Court of Appeals of the District of Columbia.*

Service accepted Oct. 25th, 1910.

REGINALD S. HUIDEKOPER,
*Ass't United States Attorney, D. C.,*
*Of Counsel for Appellee.*

[Endorsed:] Court of Appeals, District of Columbia. Filed Oct. 25, 1910. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 69, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Mytton Maury, Thomas E. Irvine, O. J. Watrous, John A. Webber, et al., appellants, vs. Frank H. Hitchcock, as Postmaster General of the United States, No. 2116, October Term, 1910, as the same remains upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix

the seal of said Court of Appeals, at the City of Washington, this 26th day of October, A. D. 1910.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals of the District of Columbia.*

Endorsed on cover: File No. 22,373. District of Columbia Court of Appeals. Term No. 752. Mytton Maury, Thomas E. Irvine, O. J. Watrous et al., plaintiffs in error, vs. Frank A. Hitchcock, Postmaster General of the United States. Filed October 31st, 1910. File No. 22,373.

# In the Supreme Court of the United States

OCTOBER TERM, 1912.



No. 157.

W. W. DEGGE, ET AL., PLAINTIFFS IN ERROR,

vs.

FRANK H. HITCHCOCK, AS POSTMASTER GENERAL OF THE UNITED STATES, DEFENDANT IN ERROR.

(22,372)

No. 158.

MYTTON MAURY, ET AL., PLAINTIFFS IN ERROR,

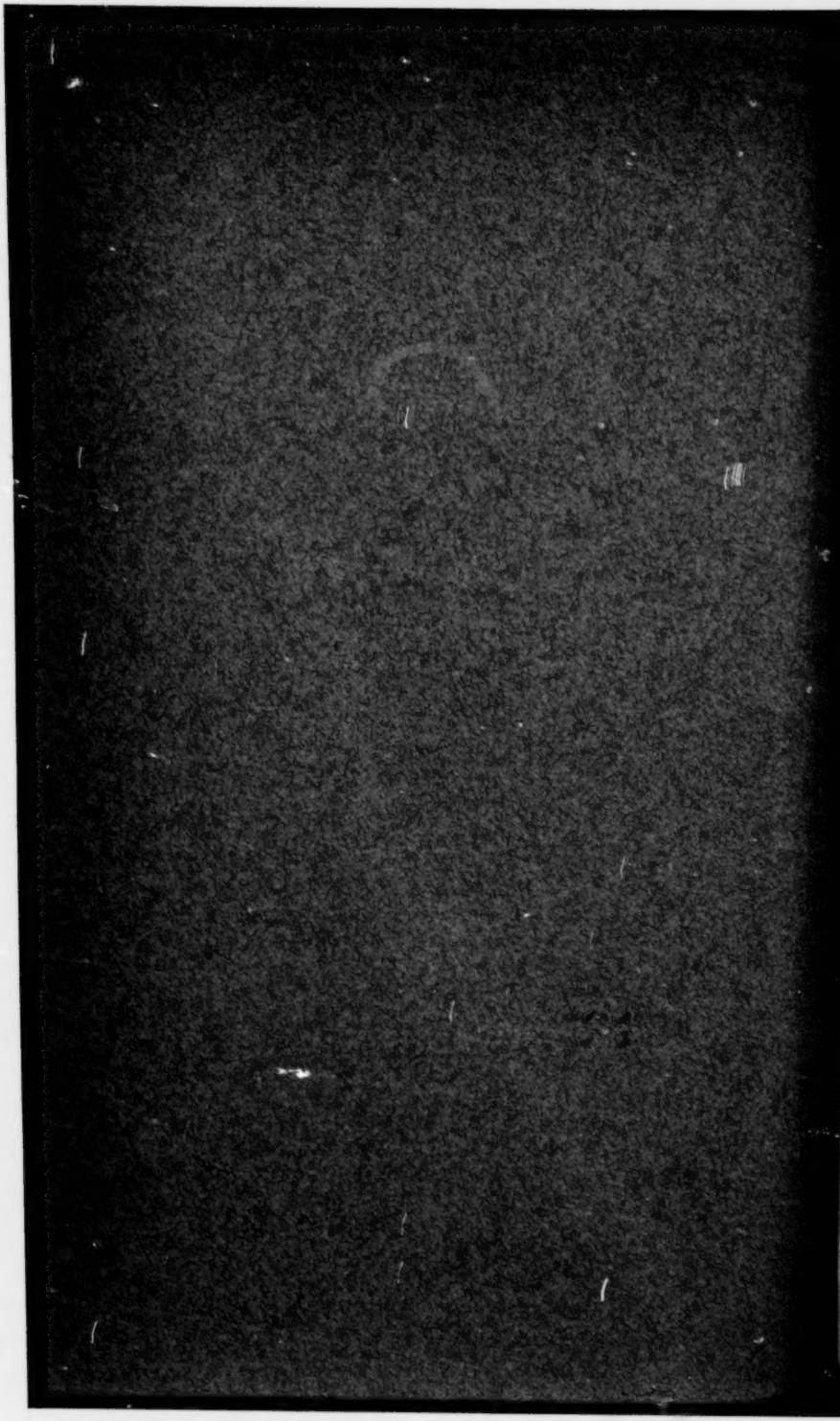
vs.

FRANK H. HITCHCOCK, AS POSTMASTER GENERAL OF THE UNITED STATES, DEFENDANT IN ERROR.

(22,373).

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

## BRIEF OF PLAINTIFFS IN ERROR.



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## SUBJECT INDEX.

## LIST OF CASES REFERRED TO.

## OTHER REFERENCES.

## 1. STATEMENT OF THE CASE.

(Note: References to folios in the printed record apply to No. 752 of the October Term, 1910, No. 158 this term.)

These cases (consolidated for argument by agreement) arise under Sections 3929 and 4041 of the Revised Statutes of the United States as amended, which provide, in substance, that the Postmaster General may, upon evidence satisfactory to him, that any person or company is engaged in conducting any lottery, gift enterprise, etc., or any other scheme or device for obtaining money or property of any kind, through the mails, by means of false or fraudulent pretences, representations or promises, issue an order instructing the postmaster to stamp all mail directed to any such person or company with the word "Fraudulent" upon the outside thereof, and return the same to the writers, and may forbid the payment of money orders to any such persons or company.

A "fraud order" was issued in March, 1909, by Postmaster General Hitchcock against W. W. Degge, the Wellington Association, The Wellington Development Company and The Wellington Investment Company and their officers and agents as such, at Boulder, Colorado (folios 10 and 11), the three companies mentioned being regularly incorporated and doing business as independent corporations, and these, together with W. W. Degge, constitute the plaintiffs in error in one of the cases now in hearing.

Before the order was issued, a hearing was given to W. W. Degge on a citation (fols. 4 and 5) signed by R. P. Goodwin, Assistant Attorney General of the Post Office Department, accompanied with a memorandum of charges which apparently assumed that the companies above mentioned were simply fictitious addresses used by Mr. Degge. The "charge" is in the following form (fols. 5 and 6):

2. THE "CHARGES" OR ACCUSATION.

"POST OFFICE DEPARTMENT.
OFFICE OF THE ASSISTANT ATTORNEY GENERAL.
WASHINGTON, January 21, 1909.

*Memorandum for the Assistant Attorney General.*

In re W. W. Degge, Boulder, Colorado.

This person is operating a scheme for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises. Said scheme in a general way is about as follows:

He has created a Wellington Association, which he controls and dominates, and of which he is the owner except small interests in some other parties. From time to time he creates various other concerns, all of which he also controls and dominates. The stockof these various subsidiary concerns he sells through the mails to the public at various prices under par, using for the purpose great quantities of printed advertising circulars, therein falsely pretending that with the funds to be obtained from sale of such stock said companies will be developed into mining and other enterprises of great value and profit, and many other false statements. The funds obtained by such sale of stock he diverts to his own enrichment by various methods, such as by sale of property from said association to the subsidiary company, by contracts for commissions to said association for selling stock, and by various other methods.

In the operation of this scheme he is getting mail as The Wellington Association, The Wellington Development Company, The Wellington Investment Company, The Wellington System, and also in his own name, W. W. Degge.

I recommend that a fraud order be issued against him and these addresses.

P. V. Keyser,
*Assistant Attorney.*"

No charge was made direct against any of the three companies mentioned, but, on the contrary, it was claimed in the findings of Mr. Goodwin, which will be referred to hereafter, that two of them, namely, the Wellington Development and The Wellington Investment Company, were victims, and were

being despoiled by Mr. Degge through the other company, the Wellington Association, instead of being wrongdoers. The name, "Wellington System," it may be explained, was a general term applied to the group of corporations operating under the name "Wellington."

A significant fact in this connection is that the stockholders, to the number of 1354, one hundred of them owning stock in the Wellington Association, nine hundred of them holding stock in The Wellington Development Company, and eight hundred of them holding stock in The Wellington Investment Company, constitute the plaintiffs in error in the other case now in hearing.

The so-called "hearing" took place before the Assistant Attorney General on the 15th of February, 1909, and Mr. Degge appeared in person and by his counsel, and filed his answer in writing to the "charges," but this *answer* is nowhere to be found in the record. The Postmaster General, in his answer to the rule to show cause (fols. 20 to 39 inclusive), incorporates, by reference, the findings or memorandum of Mr. Goodwin in paragraph 20 of his answer (see fol. 35), but it is unfortunate that neither the answer of the respondent nor the memorandum of Mr. Goodwin include the reply or defense made by Mr. Degge to the hearing on the charges in question.

Upon the conclusion of the hearing, Mr. Goodwin took the case under advisement until March 8th, and then prepared and submitted his findings in the form of a memorandum to the Postmaster General. The order followed three weeks later, and is as follows (fols. 10 and 11):

### 3. THE FRAUD ORDER.

"POST OFFICE DEPARTMENT,
Washington.

Order No. 2170.

It having been made to appear to the Postmaster General, upon evidence satisfactory to him, that W. W. Degge, The Wellington Association, The Wellington Development Company, The Wellington Investment Company, and The Wellington System, and their officers and agents as such, at Boulder, Colorado, are engaged in conducting a scheme or device for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises, in viola-

tion of the act of Congress entitled 'An act to amend certain sections of the Revised Statutes relating to lotteries, and for other purposes,' approved September 19, 1890—

Now, therefore, by authority vested in him by said act, and by the act of Congress entitled 'An act for the suppression of lottery traffic through international and interstate commerce and the postal service, subject to the jurisdiction and laws of the United States,' approved March 2, 1895, the Postmaster General hereby forbids you to pay any Postal Money Order drawn to the order of said party and concerns, and you are hereby directed to inform the remitter of any such postal Money Order that payment thereof has been forbidden, and that the amount thereof will be returned upon the presentation of the original order or a duplicate thereof applied for and obtained under the regulations of the Department.

And you are hereby instructed to return all letters, whether registered or not, and other mail matter which shall arrive at your office directed to the said party and concerns, to the pastmasters at the offices at which they were originally mailed, to be delivered to the senders thereof, with the word 'Fraudulent' plainly written or stamped upon the outside of such letters or matter, provided, however, that where there is nothing to indicate who are the senders of letters not registered, or other matter, you are directed in that case to send such letters and matter to the Division of Dead Letters with the word 'Fraudulent' plainly written or stamped thereon, to be disposed of as other dead matter under the laws and regulations applicable thereto.

(Signed) F. H. Hitchcock,
*Postmaster General.*

To the Postmaster, Boulder, Colorado.

(Case 61995-G.)"

It will be noted that The Wellington Association, The Wellington Investment Company, The Wellington Development Company, and the Wellington System, and their officers and agents as such, at Boulder, Colorado, are condemned in this order as being engaged in conducting a scheme or device for obtaining money through the mails by means of false and

fraudulent pretenses, representations and promises in violation of law, although in the so-called "Charges," W. W. Degge is the only one mentioned as being engaged in the business under inquiry. "This person" is the one conducting the "scheme."

About the 1st of June, 1909, the 1354 plaintiffs in error before referred to petitioned the Postmaster General for relief from this fraud order (fol. 15), setting forth the injuries resulting therefrom.

After waiting for several months and finding that no action was being taken upon their petition, they applied to the Supreme Court of the District of Columbia for a writ of *certiorari*, to be directed to the Postmaster General, requiring him to certify to the court the record and proceedings had before him, together with all documents, exhibits and evidence, printed and written, submitted or considered and remaining on file in the Post Office Department, to the end that the court might review the same (folios 1 to 17).

At the same time W. W. Degge and the corporations named also applied for a similar writ (see folios 1 to 15, Case No. 751).

A rule to show cause was entered in each case, and, in response thereto, the Postmaster General filed an answer (see folios 20 to 39), to which were attached certain exhibits, namely (folio 41):

Exhibit B, setting forth a regulation of the Post Office Department designating the Assistant Attorney General as the officer charged with the duty of hearing and considering cases relating to lotteries and misuse of the mails.

Exhibit A, a form letter to the Postmaster at Boulder, Colorado, transmitting the copy of the fraud order, which is included in the exhibit (folios 42 to 44).

A paper headed "Memorandum for Postmaster General" (folios 45 to 102), purporting to be signed by R. P. Goodwin, Assistant Attorney General, and apparently containing a review of the evidence taken on the hearing, together with his conclusions and findings thereon.

## 4. FOUNDATION OF PETITIONERS' RIGHTS.

The petition of Mr. Degge and the corporations is based upon the common right of citizens to *receive* mail unless that right has been forfeited by a use of the mails for purposes

which are condemned by the acts of Congress as criminal, such as lotteries and similar schemes for perpetrating fraud. It shows that the business in which the corporations were and are engaged consists in making investments in lands, irrigation ditches, reservoirs, mining property, stocks and securities, and that they were not engaged in any business or practice prohibited by any law of the United States; that no evidence showing that either Mr. Degge or any of the corporations, were so engaged was ever brought to the attention of the Postmaster General or submitted to him, nor was it made to appear to the Postmaster General on any evidence whatsoever that any of them were or had ever been engaged in any business prohibited by the postal laws of the United States; that the facts shown by the evidence considered by Mr. Goodwin and reported to the Postmaster General are not only insufficient in law to sustain the supposed "findings," but do not constitute any scheme or device condemned by Section 3929 or Section 4041 of the Revised Statutes, or any other law authorizing the Postmaster General to issue the order complained of; that none of them had done anything unlawful in the prosecution of their business, nor had any of them used the United States mails for the transportation of anything vicious, dangerous, corrupting or immoral, or anything justifying the Post Office Department in refusing to deliver mail sent to them, and that the order operated to deprive them of their rights under the constitution and laws of the United State, and, particularly, of the Fourth and Fifth Amendments; that many letters had been returned, stamped "Fraudulent," which contained nothing forbidden by law, and that, by the order complained of, the Wellington Association suffered a loss of profits exceeding twenty-five thousand dollars ($25,000) a year, and that, in issuing and enforcing the order, the Postmaster General had exercised and was exercising an authority under the United States wholly unwarranted by the constitution or laws thereof (see folios 10 to 14 of the record in case No. 751).

The petitioning stockholders based their case on the common right of citizens to have their mail *forwarded and delivered*, unless such mail contained matter vicious, corrupting, immoral or dangerous in violation of the laws of Congress and set forth practically the same grievances as the other petition (see folios 12 to 15, in case No. 752). They also set forth

their attempt by petition to the Postmaster General to have the fraud order revoked (folio 15).

The answer of the Postmaster General to the rule to show cause, instead of setting forth circumstances showing that the issuance of the writ would be inequitable or unjust by reason of changes in the situation since the issuance of the fraud order, relied entirely on *the merits of the case* to defeat the writ, and is based, in the main, on the following propositions, to-wit:

1. That he is the sole judge in fraud order proceedings of all questions of *fact*, whether forming the basis of his jurisdiction or not.

2. That he is likewise the sole judge of all questions of *law*—that is, whether in a given case the facts, *as a matter of law*, constitute a scheme forbidden by the statute.

3. That the scheme under investigation was fraudulent in fact, and was found to be so by the Assistant Attorney General, which finding constituted evidence of fraudulent practices satisfactory to him.

4. That the facts shown by the evidence and reported by the Assistant Attorney General constituted a scheme forbidden by Sections 3929 and 4041, R. S. U. S.

5. That his judgment, both in matters of law and of fact, is not reviewable by the courts, and that the courts have no jurisdiction to issue the writ of *certiorari* in such cases (see folios 30 to 39).

On December 20th, 1909, Mr. Justice Wright denied the petitions in both cases, discharged the rule to show cause, and taxed the costs against the petitioners (folio 103).

Petitioners appealed to the Court of Appeals of the District of Columbia, where the judgment of the lower court was affirmed May 10, 1910 (Degge v. Hitchcok, 35 App. Cas. D. C. 218), the two cases being consolidated for argument (see record p. 62), and thereupon a writ of error was allowed to the Supreme Court of the United States (see record, pp. 63 to 65).

The real points decided by the District Court of Appeals are stated in the two concluding paragraphs of the reported opinion, as follows:

> "The language used in the statute plainly shows that it was intended to apply to two classes of cases: First to schemes for the distribution of money, etc., by lot, chance or drawing of any kind; second to all schemes or devices to obtain money or property of any kind by

means or false and fraudulent pretenses, representations or promises. Public Clearing House v. Coyne, 194 U. S. 497, 505.

The Postmaster General found upon evidence satisfactory to him that the scheme of the appellants was one of the second class provided for by statute. As he clearly had jurisdiction to entertain the charge and pass upon the evidence submitted in support of the same, the correctness of his determination cannot be reviewed by *certiorari.*" Degge v. Hitchcock, *supra.*

## 5. ASSIGNMENT OF ERRORS.

1. The trial court erred in denying the petitions.
2. The trial court erred in discharging the orders to show cause in each case why the writ should not issue.
3. The trial court erred in not ordering the writs to issue.
4. The trial court erred in rendering judgment for costs against the petitioners.
5. The Court of Appeals of the District of Columbia erred in affirming the judgment of the court below.

## 6. BRIEF OF THE ARGUMENT.

Whether it is ever permissible in resisting a rule to show cause why a writ of certiorari should not issue, to show that the judgment of the inferior tribunal was right upon the merits, as has been attempted in this case, may well be questioned. That is a matter more properly triable upon return made to the writ.

If, however, such a method of procedure is to be tolerated, it follows inevitably that the respondent *must state the whole case* as completely as if he had made a full return in obedience to the writ. Otherwise an inferior tribunal might defeat justice by setting forth such facts bearing upon the merits as tend to support its judgment, and omit those which tend to show that the judgment was wrong or in excess of jurisdiction.

It will, therefore, be profitable to call brief attention to some of the more important facts, and to point out some still more important omissions.

The findings and conclusions of the Assistant Attorney

General (which constitutes the "satisfactory evidence" upon which the Postmaster General acted) "are based entirely" using the language of the memorandum, "unless it is otherwise specifically stated."

1. Upon Mr. Degge's published advertisements and circulars;

2. Upon statements made November 18, 1908, to the Inspectors and taken down in writing;

3. Upon the facts shown by the audit made, at his request, of his books by The Continental Audit Company, of Denver, Colorado, dated November 6, 1908, and showing the condition of the books as of June 30, 1908; and

4. Upon the facts obtained by examination of Mr. Degge's books and records by the Inspectors at their interview with Mr. Degge in November. (Fol. 46).

(NOTE. These "facts" are probably detailed in the *confidential report* of the Inspectors, which neither the public nor the interested party is allowed to see.)

The memorandum recites that the Wellington Association was incorporated *January* 2, 1095, and numbers 607 stockholders beside Mr. Degge and his family; that this is Mr. Degge's "inside corporation;" that out of 156,020 shares of preferred stock outstanding, Mr. Degge holds 31,250 shares, besides 225,000 shares of common stock, the public holding 124,770 shares of preferred stock. These latter shares were sold to the public *prior to May*, 1906. (Note. The dates and figures are important. Mr. Degge is charged with *enriching himself* by means of *dividends* through his *inside corporation* at the expense of subsidiary corporations. Please observe that he holds only *one-fifth of the dividend paying stock*, and that this condition has continued at least since May, 1906). The common stock has never drawn a dividend. (Fol. 47).

About three-fourths of the memorandum is devoted to a history of dealings between Mr. Degge through his "inside corporation" and the other companies mentioned in the charges, under the following significant headings, viz:

1. "Profits of the Association on sale of Wellington Gardens to subsidiary Companies." (Fol. 54).

2. "Profits of Wellington Association and W. W. Degge on sale of Personal Holdings of Development Company Stock." (Fol. 62).

3. "Concealment of Loss by Development Company of $70,000 on Mammoth Mine," and

"Fake Dividend of Development Company." (Fol. 68).

4. "Profit of Association from Sale of Miscellaneous Mining Claims to subsidiary Companies." (Fol. 77).

5. "Profits to the Association from Sale of Stock in Goldfield Tri-Metallic Mining Company." (Fol. 81).

According to the memorandum, these subsidiary companies were incorporated on the following dates, to-wit:

The Wellington Development Company, January 10, 1907.

The Wellington Investment Company, January 4, 1908. (Fol. 48).

A sample of the theories upon which the charge of fraudulent practices is predicated will be found in the history and criticism of the sale of a one-third interest in what is known as the "Wellington Gardens" property from the parent company to the Development Company in March, 1907, at an advance of 36 per cent over the contract price, after the parent company had made initial payments, assumed all the risks of the purchase, defrayed all the expenses of the transaction,and had held the property for some months. (Fol. 55).

This property comprises about 2800 acres of fruit land in the suburbs of Boulder, Colorado, a city of 15,000 people, together with ditches, reservoirs and water rights sufficient to irrigate upwards of 4,000 acres of land. It includes three distinct purchases which were made at different times during the summer and fall of 1906.

The contract price which the parent Company obligated itself to pay out in these three purchases aggregated the sum of $110,000.00. The last of the three companies to be organized, viz: The Wellington Investment Company, was incorporated January 4, 1908, between twelve and eighteen months after these purchases, and a one-third interest which cost the parent company $36,666.67, besides interest and expense, was purchased by the Investment Company for $75,000.00 and was, at the time of the hearing, about one year later, variously estimated to be worth from $150,000.00 to $250,000.00 by competent judges. *Only the Inspectors* disputed these estimated values, and that solely on the ground that no improvements had been made to *enhance* them.

We quote from the memorandum as follows:

"The question of fraud involved here does not concern the prospective value of this land, but only the profiting of the parent company from the subsidiary companies under the same management." (Record, p. 31, fol. 58).

Again:

"If, however, these lands were of the value that Mr. Degge claims for them, I think it increases rather than diminishes the fraud involved in his obtaining a one-third interest in this property for his parent company entirely at the expense of the auxiliary companies under the same management." (Record, p. 32, fol. 60).

Other headings in the body of the memorandum indicating the theories upon which other conclusions of fraud are predicated, are as follows, to-wit:

6. "Claims of ownership of 2000 acres of Patented land at Leadville, Colorado and 'Venir Group.'" (Fol. 73).

7. "Association dividends." (Fol. 82).

8. "Cost of financing not in excess of 25 per cent, and 75 per cent invested for benefit of purchasers of stock." (Fol. 92).

9. "Mining Investments successful." (Fol. 96).

These refer to supposed false representations made by Mr. Degge in his circulars and published advertisements to induce the purchase of stock in the subsidiary companies.

10. "Deals disclosed." (Fol. 100).

This refers to the claim made by Mr. Degge at the hearing that *all the facts* had been repeatedly published to the stockholders and investing public; that because of this there had been no deception, and that without deception there *could not be any fraud.*

We quote what is contained under this head in the memorandum in full, (record, p. 57, fol. 100):

"DEALS DISCLOSED."

> "In his defense at the hearing Mr. Degge claimed that the facts in regard to the profits taken by the Association from the Development and Investment Companies in the Gardens Transaction, and the fact that the Association has charged the subsidiary companies 25 per cent brokerage fees for selling their stocks, have been published to his investors. He was requested to refer to the specific statements published by him to that effect. In answer to that request he referred to the issue of his promotion magazine 'Success', of February, May, June, August and November, 1908, and February and April, 1906, and July and December, 1905,

and to an undated circular entitled 'To-day.' With the exception of statements published in 1908, when disclosure was made of these deals by *certain mining papers of Denver between the publishers of which and Mr. Degge bitter controversy had arisen* the true facts in regard to his manipulation of the subsidiary companies to the profit of his inside company have not been revealed but have been carefully concealed, and the contrary repeatedly claimed. Such statements as Mr. Degge has been forced to make by the controversy mentioned, have been put forth in such vague and evasive manner as to be calculated to confuse rather than enlighten the average investor in his promotions. Particularly is this illustrated by the fact that he published the audit of the Continental Audit Company as a complete 'vindication,' when in fact, that audit, intelligently analyzed, reveals his enrichment on his inside company, the Association, at the expense of the subsidiary companies."

To incorporate a complete resume of the memorandum herein would be to go into the *merits properly triable only on final hearing after the issuance of the writ.* Only sufficient reference is here made to disclose the nature of the case and the *possibilities incident to a review.*

## 7. SOME SIGNIFICANT ERRORS AND OMISSIONS.

The printed circulars in which Mr. Degge made known to his stockholders the relation between his so-called "inside corporation" and the subsidiary companies, and in which he made known (as he claimed) to his stockholders and the investing public generally, the facts concerning the transaction involved upon the hearing, are all apparently specified in the paragraph above quoted, under the head of "Deals Disclosed." But their *contents* art studiously *omitted.* Only the writ of certiorari will show what these contents are. And, being in the nature of *documentary evidence,* their *construction* and *effect* are *questions of law.*

The written and printed papers upon which the findings and conclusions are based are all specified in the memorandum. Their contents are also omitted with the exception of *extracts* quoted from Mr. Degge's printed circulars and advertisements, and only the writ of certiorari would show whether *on*

*the whole* there was any deception, or whether there was *any evidence whatever* of a fraudulent scheme or device within the meaning of the statute. This is also a question of law.

Curiously enough, a majority of the stockholders (the supposed victims of the fraud) do not seem to agree with the analysis of the audit made by the Postmaster General and his Assistant Attorney General, and it is only fair to assume that a goodly number of them are business men, capable of analyzing the audit as "intelligently" as the officials of the Postoffice Department. Are they *all* wrong, and is the Assistant Attorney General *alone* right?

Mr. Degge's *answer to the citation* is referred to in the memorandum, but its *contents* are not disclosed to the court. We say in our petition for the writ that many of the matters submitted by Mr. Degge at the hearing were ignored and not considered. Mr. Hitchcock says in his answer that this allegation is "false and misleading."

Upon this point we quote from the memorandum as follows:

> "Mr. Degge has made no effort to justify these profits from the subsidiary companies in this transaction, *except in connection with the claim that he believes that the Gardens will still realize these companies large profits.*" (Record p. 30, fol. 57).

We now quote from a copy of Mr. Degge's answer to the citation as follows:

> "As to self enrichment through profits on the sale of property through the Association, the sales in question are doubtless those covering a one-third interest to the Development Company, and another one-third interest to the Investment Company, of the lands adjoining the City of Boulder on the north, and known as 'Wellington Gardens,' together with the ditch, reservoir and water rights appertaining thereto. This land consists of about 2800 acres which was purchased at different times by the Association from different parties, and the Silver Lake Ditch and Reservoir System, purchased with one of the tracts comprising the Gardens. The Association began acquiring these in July, 1906, long before either of the other companies was organized. The Association made heavy initial payments, and assumed all the risks of the purchase. The Association

obligated itself to pay $110,000.00 in all for the land, ditches, reservoirs and water.

The Development Company was not organized until January, 1907, six months after the Association began these purchases, and it was not until March 1, 1907, that it was ready to consider large investments on its own account. When that time arrived, it had become the settled policy of the management to invest a substantial proportion of the capital in real estate essets which would insure the stockholders against the loss of their investment and yield a satisfactory profit besides, instead of risking all in the more speculative field of mining and other ventures. And there was nothing in the way of a real estate investment in sight and available at that time that would begin to compare in attractiveness and security with Wellington Gardens.

A meeting of the Board of Directors of the Development Company was called, and a proposition was submitted to them by Mr. Degge, to sell to the Development Company a one-third interest in the Wellington Gardens for fifty thousand dollars ($50,000.00). In accepting this proposition the directors showed their good judgment, as subsequent events have proven. Thus, the Association made a profit of $13,333.33, or 36 per cent on its original investment after holding it for about eight months. From this should be deducted interest, the expense of investigation, working out the details of purchase, etc.

The Investment Company was organized in January, 1908, and the most fortunate event in its history was the opportunity presented to it of purchasing a one-third interest in the same Wellington Gardens for seventy-five thousand dollars ($75,000.00), and the directors were actuated by the same reasons in accepting the proposition that prompted those of the Development Company in seizing a like opportunity ten months before. The property had increased in value with an unexpected rapidity during the eighteen months that the Association owned the part transferred to the Investment Company, and within nine months after the Investment Company acquired its interest in these lands, their sale began in five acre tracts at $500.00 per acre, and at this date five of such tracts have been sold

and payments made thereon; two more are contracted for, but no payments had been received up to the hour of our leaving Colorado, all at the uniform price of $500.00 per acre, while enquiries by mail are now in hand for more than thirty other tracts, with good prospects of a sale in the large majority of cases by spring.

It is not pretended that we will be able to realize this uniform price from the entire 2800 acres, comprising Wellington Gardens, although all enquiries so far received cover $500.00 land. That portion lying farthest from the city of Boulder, will needs be sold for a less price. But the average will run close to, and may exceed $300.00 per acre, or $840,000.00 for the whole, or $280,000.00 for the one-third interest which cost the Investment Company $75,000.00 about a year ago."

(N. B. This paper is not in the record, but it ought to be).

Inasmuch as the Postmaster General has rested his defense in this proceeding entirely upon the findings and conclusions of his subordinate, the Assistant Attorney General, and has relied upon such findings and conclusions as being conclusive and not subject to review by the courts, carefully suppressing and omitting from this record the papers on which such findings and conclusions are based, it becomes necessary to bring up the omitted papers by means of the writ of certiorari, and this will show how many more "false and misleading" statements there are and who made them. An honest and candid public official who claims the right on "evidence satisfactory to him" by a stroke of the pen to throttle a million dollar enterprise ought not to object so strenuously to a reexamination of the matter, at least so far as the legal questions involved are concerned, especially when the supposed victims whom he is assuming to protect and over whom he is assuming to exercise paternal guardianship, come into court, as in this case, and challenge the righteousness as well as the legality of his action.

Boiled down, the answer of the Postmaster General to the petition of the stockholders of the Wellington Companies amounts to the following:

"You have been defrauded. I have so decided up evidence *satisfactory to me*. It is not for you to say whether you will do business by mail with a concern which I have denounced as fraudulent. That is *my* prerogative. It is not for *you*

to decide whether the concern with which you are doing business has deceived or defrauded you. That prerogative belongs to *me. I have exercised that privilege and you have no right to complain.*

Whether I am *right or wrong,* or whether I have *misconstrued the law or not,* is not for the courts to say. *The courts have no business to interfere."*

Moreover, the measures adopted for the protection of the supposed victims of the fraud are the strangest ever heard of. The fraud order closes the mails as well against The Wellington Development Company and The Wellington Investment Company (the supposed victims, according to the findings of the Assistant Attorney General) as against The Wellington Association and W. W. Degge (the alleged despoiler).

And this is in the face of the fact that the *findings do not support any fraud order against any of the corporations.* According to the findings, W. W. Degge is the only offender. (See record, p. 58, fol. 102).

## 8. THE REVISORY POWER OF THE COURTS.

It is now well settled that the decisions of the Postmaster General in fraud order cases are by no means final and conclusive. In a recent decision Judge Sanborn says:

> "But his authority, like that of every other executive officer upon whom quasi judicial power is conferred by acts of Congress, is neither unbounded, arbitrary nor discretionary. It is limited, and its exercise is governed by the acts of Congress which confer it and by the laws of the land, and his violation or disregard of either is remediable in the courts. If he is induced to issue a fraud order in a case beyond his jurisdiction, or by reason of an error of law in a case within his jurisdiction, and its issuance in the absence of any evidence before him to sustain it, or upon facts found, conceded, or established without dispute which do not sustain it is an error of law, or if he is caused to issue it by reason of fraud or gross mistake of fact which renders its issuance palpably wrong, the victim of the order is not remediless."

Peoples U. S. Bank vs. Gilson, 161 Fed. R. 290,291.

The power of the courts to give relief in proper cases is

also upheld by the Supreme Court of the United States in the following language:

> "That the conduct of the Postoffice is a part of the administrative department of the government is entirely true, but that does not necessarily and always oust the courts of jurisdiction to grant relief to a party aggrieved by any action by the head or one of the subordinate officials of that department which is unauthorized by the statute under which he assumes to act. The acts of all its officers must be justified by some law, and in case an official violates the law to the injury of an individual, the courts generally have jurisdiction to grant relief."

And again:

> "To authorize the interference of the Postmaster General, the facts stated must in some aspect be sufficient to permit him under the statutes to make the order. The facts, that are here admitted of record, show that the case is not one which by any construction of those facts is covered or provided for by the statutes under which the Postmaster General has assumed to act, and *his determination that those admitted facts do authorize his action is a clear mistake of law* as applied to the admitted facts, and the courts, therefore, must have power in a proper proceeding to grant relief. Otherwise, the individual is left to the absolutely uncontrolled and arbitrary action of a public and administrative officer, whose action is unauthorized by any law and is in violation of the rights of the individual. Where the acts of such an officer is thus unauthorized he thereby violates the property rights of the person whose letters are withheld."

American Cchool of Magnetic Healing vs. McAnnulty, 187 U. S. 94, 108-110.

Speaking of the powers and duties of the head of a department, Chief Justice Marshall says:

> "Where he (the officer) is directed by law to do a certain act affecting the absolute rights of individuals, in the performance of which he is not placed under the particular direction of the president, and the performance of which the president cannot lawfully forbid * * * * it is not perceived on what ground the courts

of the country are further excused from the duty of giving judgment that right be done to an injured individual, than if the same services were to be performed by a person not the head of a department."

Marbury vs. Madison, 1 Cranch 137, 171.

## 9. THE WRIT OF CERTIORARI AT COMMON LAW.

It is considered an extraordinary remedy resorted to for the purpose of supplying a defect of justice in cases obviously entitled to redress, and yet unprovided for by the ordinary forms of proceedings.

Harris on Cert. Secs. 17-21.
4 Enc. P. & P. 9-10.

NOTE—Duggan v. McGruder, 12 Am. Dec. 536.

In the Federal Courts it is in the nature of a writ of error to bring up after judgment the proceedings of an inferior court or tribunal whose procedure is not according to the course of the common law.

Harris vs. Barber, 129 U. S. 366-369.
District of Columbia vs. Brooke, 29 App. D. C. 563-565.
District of Columbia vs. Burgdorf, 6 App. D. C. 465.

## 10. WHAT ARE INFERIOR TRIBUNALS.

The test of the question whether a proceeding is reviewable upon certiorari is not what are the usual functions exercised by the tribunal, but what is the *character of the proceedings* sought to be reviewed. Thus, a judge may be invested with some ministerial authority. This is not thus reviewable. An executive officer is occasionally charged with duties of a judicial nature. In this case the action can be so reviewed.

(See note to Duggan vs. McGruder, 12 Am. Dec. 527-536).

"A tribunal which is not a common law court, which does not proceed according to the course of the common law, a newly created, limited and special jurisdiction from which no appeal is allowed by statute nor writ of error by the common law, yet determining in a summary way the most important rights and franchises,

both as respects the people and private persons, is and cannot be otherwise than an inferior tribunal in the strictest sense of the word."

Cunningham vs. Squires, 2 W. Va. 422, 424.

Thus, it has been held by the Supreme Court of South Carolina that it has jurisdiction to enforce a writ of certiorari against the Governor in a case in which he is created a judicial tribunal by the General Assembly.

State vs. Ansel, 76 So. Car. 395, 412-414.

## 11. WHAT PROCEEDINGS WILL BE REVIEWED.

The proceeding before the Postmaster General in this case, was *quasi judicial* in character. It involved a *hearing* and the ascertainment of *facts* upon *evidence*. It resulted in a *decision* based upon alleged *satisfactory evidence*. In such cases the Postmaster General exercises judicial or quasi judicial functions.

"The Postmaster General is alleged to have been engaged in making inquiry as to whether the Securities Company should be forbidden the use of the mails. *This inquiry was quasi judicial in its character*. It could be followed by an order depriving the Securities Company of the valuable privilege of using the mails. Such inquiry involves many of the essential characteristics of a proceeding or accusation; at least, in my opinion, enough so akin to or so alike the 'proceeding' or 'accusation' of the statute as to be fairly comprehended by the general words under consideration."

U. S. vs. Burton, 131 Fed. R. 552, 556-557.

The Supreme Court of New York has held (a) That public officers which the court has power by injunction to restrain are *ministerial* and not judicial officers; (b) That assessors are quasi judicial officers when acting within the sphere of their jurisdiction and their assessments are in the nature of *judgments;* (c) That *certiorari* is an appropriate legal remedy and there is no necessity for resort to equity.

Western R. R. Co. v. Nolan, 48 N. Y. 513, 518-519.

## 12. WHAT QUESTIONS WILL BE REVIEWED.

Where there is technically no record, the proceedings and orders in the nature of a record can, as a rule, alone be regarded. But the *evidence* upon a *disputed jurisdictional fact* is reviewable, as well as every issue of law upon the question of jurisdiction. Not only the record, but the *evidence to support jurisdiction* must, when necessary, be returned.

Whitney v. Board, 14 Cal. 479, 500-501.

> "Inferior magistrates when required by writ of certiorari to return their proceedings, must show affirmatively that they had authority to act; and where, as in the present case, their authority and jurisdiction depends upon a fact to be proved before themselves, and such fact be disputed, the magistrate must certify the proofs given in relation to it for the purpose of enabling the higher court to determine whether the fact be established. The decision of the magistrate in relation to the *other* facts is final and conclusive and will not be reviewed on a common law certiorari. But the main object of this writ being to confine the action of the inferior officers within the limits of these delegated powers, the reviewing court must necessarily re-examine, if required, the decision on all questions on which his jurisdiction depends, whether of law or of fact."

People v. Goodwin, 1 Selden (N. Y.) 568, 572.

In another case the court said:

> "By the act, the owners of the buildings pulled down and destroyed, and all persons having an estate or interest therein, are entitled to the damages they sustained by such tearing down and destruction. No person not having an interest in such buildings is embraced within the provisions of the act. The inferior tribunal, therefore, in awarding damages to, or for the benefit of persons not having an interest in the building, clearly transcended their jurisdiction. It was equally an excess of jurisdiction to allow damages to an owner or lessee for goods not covered by the act as to allow damages to a person having no interest in the building. And this is not merely a case of a wrong rule of damages, or a question as to the amount of dam-

ages allowed for a loss provided for by the act, but it is a case of an award of damages for a loss beyond, and not provided for by the act. A plain case of excess of jurisdiction."

Stone v. Mayor and Aldermen, 25 Wend (N. Y.) 157, 170-171.

See also

People v. Assessors, 39 N. Y. 81, 88-89.
People v. Assessors, 40 N. Y. 154, 158.
People v. Allen, 52 N. Y. 538, 541-542.
People v. Board of Police, 39 N. Y. 506-518.
People v. Brooklyn Commissioners, 103 N. Y. 370.

## 13. ALL PARTIES INTERESTED AND AGGRIEVED ARE ENTITLED TO THE WRIT.

It is not necessary that a petitioner for a certiorari should be a party of record, but only that he should be interested in the subject matter upon which the record rests.

Dyer vs. Lowell, 30 Me. 217, 220.

"If the petitioner for the writ is a party in substance, though not of form, he may have the writ. So also, if the matter to be reviewed is one which effects the public generally, an individual citizen may ordinarily invoke the remedy by certiorari. For a still stronger reason it follows that the same remedy is open to the individual citizen who suffers peculiar injury by reason of a judgment entered in excess of jurisdiction."

Hemmer vs. Bonson (Ia.) 117 N. W. 257, 259.

If the exercise of a sound judicial discretion requires that one thus injured ought to have the writ it is an abuse of authority to refuse it.

State vs. Chittenden, 127 Wis. 468, 470, Syl. 4.

Where individual rights are affected in a case in which there are no formal parties and no appeal or other remedy for an excess of jurisdiction exists, a review by certiorari is allowed to those who are bound by the proceedings. And even a

stranger whose rights are affected may make himself a party by moving to set aside the judgment or order. So that if for no other reason the fact that the petitioning stockholders in cause No. 2116 in this court first petitioned the Postmaster General to revoke the fraud order entitles them now to the writ in this case.

Elliott vs. Superior Court, 144 Cal. 501, 508-509.

See also

Campau vs. Button, 33 Mich. 525, 526.
Wilson vs. Bartholomew, 45 Mich. 41.
Cowing vs. Ripley, 76 Mich. 650.
Pingree vs. County Commissioners, 30 Me. 351.
State vs. Snedeker, 30 N. J. L. 80.
People vs. Ford, 112 N. Y. S. 130.
Clary vs. Hoagland, 5 Cal. 476.
State vs. Rose, 4 N. Dak. 319, 329-331.

## 14. THE WRIT SHOULD HAVE BEEN GRANTED AS OF RIGHT.

"This being a summary proceeding of an inferior tribunal not according to the course of the common law, we think the party entitled *Ex debito justitiae* to a certiorari to bring it up for review in the matter of law as in other cases on a writ of error; and if found to be erroneous to have it quashed."

Matthews vs. Matthews, 4 Ired. L. (N. C.) 155, 158.
State vs. Bill, 13 Ired. L. (N. C.) 373.

See also:

The Queen vs. Justices of Surrey, L. R. 5 Q. B. 473.

"It is equally true that if a party directly aggrieved by the order of an inferior tribunal can show that the court had no jurisdiction, or had in substance exceeded its jurisdiction, or was improperly constituted, the general course is to award the writ as of common right, unless the applicant has by his conduct forfeited that right."

In re, Lord Listowel's Fishery, 9 Ir. C. L. ———46 Q. B. ———.

## 15. DISCRETION REVIEWABLE.

"The writ of error will not lie, it is said, because the judge has discretion to grant certiorari or not; but what sort of a discretion? Not an arbitrary one to do as he pleases; but to discover by the right rule of law what is right and so do that. If he does otherwise his unrighteous discretion shall be purified and made to agree with his duties and the rights of the applicant."

Bob vs. State, 2 Yerg. (Tenn.) 173, 179-180.

"The discretion was not an arbitrary one, but one to be exercised in subordination to legal principles, and we may always inquire whether these principles have been adhered to or departed from" (The judgment denying the writ was reversed.)

Trustees vs. School Directors, 88 Ill. 100, 103.

## 16. EVEN LAPSE OF TIME WILL NOT BAR ORDINARILY IN MERITORIOUS CASES.

Thus it has been held that the writ will be refused:

(a) When the defect below is one of form and no substantial injury has been done to the party complaining.

(b) When the party has by reason of laches in not taking the objection at an earlier stage permitted the adverse party to make large expenditures for objects beneficial to the party seeking to quash the proceedings.

The writ will be granted:

(a) When the proceedings were wholly unauthorized by law.

(b) When the errors complained of are matters of substance and not of form.

(c) When the objections go to the merits of the case and could not have been obviated if taken earlier.

(d) When the complaining party will be compelled to pay damages in a case not warranted by law.

Although the writ was applied for in 1844 to review a judgment rendered in 1840, the court says:

"The objection herein relied upon by the petitioner does not fall within either class of cases alluded to." (when the writ will be refused as noted above.)

"The objection to the complaint is a substantial one and may be properly urged at this late stage of the proceedings."

Barnard vs. Fitch, 48 Mass. 605, 609.

"Mere lapse of time alone, short of limitation for the prosecution of a writ of error, will not bar the issuing of a common law certiorari. To be barred by the laches of the petitioner it must appear that since the making of the record sought to be reviewed, and upon its assumed validity something has been done so that great public detriment or inconvenience might result from declaring it invalid."

Drainage Commissioners vs. Volke, 163 Ill. 243, 248.

See also,

Starr vs. Borough of Elmer (N. J.) 67 A. 1059.
State vs. Hudson City, 29 N. J. L. 115.

## 17. BOTH PETITIONS ARE SUFFICIENT IN FORM AND SUBSTANCE.

If a petition shows that an injustice has *probably* been suffered it is sufficient.

6 Cyc. 783.
Murray vs. Supervisors, 23 Cal. 493.
King vs. Loncope, 7 Tex. 236, 239.

## 18. QUESTIONS RAISED BY RESPONDENT'S ANSWERS.

As a matter of fact neither of the answers of the respondent contain anything in the nature of an attempt to show that the court should refuse the writ in the exercise of its discretion because of anything done or omitted by the petitioners. The Postmaster General in his answer plants himself squarely on the following propositions, to-wit:

1. That he is the sole judge in fraud order proceedings of all questions of *fact*, whether forming the basis of his jurisdiction or not.

2. That he is the sole judge in fraud order proceedings of all questions of *law*, that is, whether in a given case, the facts *as a matter of law* constitute a scheme forbidden by the statute.

3. That his judgment, both in matters of law and of fact, is not reviewable by the courts in certiorari proceedings, and that the courts have no jurisdiction to issue the writ in such cases.

4. That the scheme under investigation was fraudulent in fact, and was found to be so by the Assistant Attorney General, which finding constituted evidence satisfactory to him of fraudulent practices.

5. That the facts shown by the evidence and reported by the Assistant Attorney General constitute a scheme forbidden by sections 3929 and 4041, R. S. U. S.

## 19. THE REAL QUESTION AT ISSUE HERE.

The real question arises on the first three propositions above enumerated. The only thing for this court to determine is whether the writ shall issue. Therefore the fourth and fifth propositions are only incidentally involved. As the Supreme Court of Dakota intimated in a well considered case, these were the very questions the lower court was asked to try, and can only be tried upon the writ and the return. Since the writ was denied in the case at bar, these questions are not properly before this court.

In the Dakota case the lower court quashed the writ upon a motion based upon sixteen grounds. The second ground of the motion was to the effect that the affidavit and writ failed to show any case in which the writ ought to issue. Concerning this ground the appellate court says, that it does not give the material for a better writ, and is equivalent to saying that it ought to be set aside because it ought to be set aside.

The seventh ground alleged that the affidavit did not show that the applicant was beneficially or legally interested. The Supreme Court replies that a saloonkeeper is especially injured by unlawful proceedings under a local option law, although there may be others likewise injured.

The ninth and tenth grounds contradicted one another. In the ninth it was alleged that the action of the Board was appealable, and therefore under the statute not subject to the writ, while the tenth ground alleges that the action was min-

isterial. Concerning the ninth ground, the appellate court says that the action involved judgment and discretion, and that certiorari is the proper remedy, and inasmuch as the discretionary powers of the court below had not been invoked by the objections presented, the judgment below was reversed with directions to proceed on the merits.

Champion vs. Commissioners, 5 Dak. 417, 433.

## 20. A WORD AS TO THE MERITS.

It will be noted by reference to pages three and four of the printed record in this case that the citation and charges in the hearing before the Postmaster General involved W. W. Degge only, and did not involve any of the corporations against whom the fraud order was issued. *An inferior tribunal may not go beyond the issues in a case* and the issuance of the fraud order against the corporations, for this reason alone, *was in excess of jurisdiction.*

Whitney vs. Board, 14 Cal. 479, 500-503.

SECONDLY—We have already shown that The Wellington Development Company and The Wellington Investment Company, as corporations, were not charged with any wrong doing, and according to the Assistant Attorney General's own findings, which were adopted by the Postmaster General in this case, they were not guilty of any wrong, but on the contrary were the supposed victims of the alleged fraud. Hence, the issuance of the order against them was with jurisdiction.

THIRDLY—The history of the fraud order statutes plainly indicates that the "mischief aimed at" was the *lottery traffic.* This species of legislation was initiated by Congress in 1868 and by Section 13 of "An Act to further amend the Postal Laws" approved July 27th of that year, it was provided as follows:

> "Section 13. And be it further enacted that it shall not be lawful to deposit in a Post Office to be sent by mail, any letters or circulars containing lotteries, so-called gift concerns, or other similar enterprises, offering prizes of any kind on any pretext whatever."

15 Stats. at L. 196.

Speaking of such legislation, Mr. Justice Field in an early case says:

> "In excluding various articles from the mail, the object of Congress has not been to interfere with the freedom of the press, or with any other rights of the people; but to refuse its facilities for the distribution of matter deemed *injurious to the public morals.*"

After quoting the act of 1873 in reference to obscene matter, the learned Justice proceeds:

> "All that Congress meant by that act was that the mail should not be used to transport such corrupting publications and articles, and that any one who attempted to use them for that purpose should be punished. The same inhibition has been extended to circulars concerning lotteries, institutions which are supposed to have a demoralizing influence upon the people."

Ex Parte Jackson, 96 U. S. 727, 736.

The same construction was adopted by Mr. Justice Cox in another early case which arose in the District of Columbia.

Dauphin vs. Key, MacA. & M. 203, 213-214.

In the latter case Mr. Justice Cox says:

> "All the citizens of the United States have a constitutional right to equal participation in the benefits of legislation and the use of any instrumentality created by it, unless, at least, the exclusion be imposed by way of punishment for crime, and that after due conviction only; and that any condition destructive of this equality is repugnant to the spirit of the Constitution."

(Page 210.)

In the course of time schemes were devised for the purpose of evading the laws prohibiting the lottery traffic, which were not lotteries in the strictest sense, but were, nevertheless, so in effect. To meet these conditions Congress in 1890, passed "An Act to amend certain sections of the Revised Statutes relating to lotteries, and for other purposes." This act includes sections 3929 and 4041 as now in force.

By the act of March 2nd, 1895, entitled "An Act for the suppression of *lottery traffic* through national and interstate

commerce and Postal service subject to the jurisdiction and laws of the United States" it was provided:

> "Section 4: That the powers conferred upon the Postmaster General by the Statute of eighteen hundred and ninety, chapter nine hundred and eight, section two, are hereby extended and made applicable to all letters or other matter sent by mail."
>
> 28 Stats. at L. 964.

Now it is plainly manifest from the wording of Sections 3929 and 4041 as they now stand that Congress regarded all lotteries, gift enterprises and schemes for the distribution of money or property by lot, chance, or drawing of any kind, as schemes for obtaining money through the mails by means of false and fraudulent pretenses, representations and promises. And in order to cover all evasions of the law prohibiting lotteries, Congress extended the prohibition to "any *other* scheme or device for obtaining money or property of any kind through the mails by means of false and fraudulent pretenses, representations and promises."

If Congress meant by the clause last above quoted to empower the Postmaster General to say of one institution "this concern is doing an honest business and may have the use of the mails" and of another person "this person is conducting his business dishonestly, and cannot have the use of the mails," then the business and financial institutions of this country are in serious peril, and no citizen, however innocent himself, can communicate with any person or business institution that has been found guilty by the Postmaster General of dishonesty in business transactions. All cases of ordinary fraud in which the use of the mails is involved, instead of being redressed by appeal to the courts, in accordance with immemorial usage, would then be confided to the determination of the Postmaster General in summary proceedings not according to the course of the common law. It is incredible that Congress intended any such consequences. According the rule of *ejusdem Generis* must be applied to the clause in question, and there is ample authority in support of this view.

United States vs. Beach, 71 Fed. R. 160.
United States vs. Burton, Supra.
Button vs. State Corporation Commission, 105 Va. 634.

It is true that there are several decisions of the Federal courts which adopt the broad construction of the law which has been followed by the Post Office Department. But the Supreme Court of the United States has never yet directly passed upon the question whether it is within the power of the Postmaster General, under the law as it stands, to stamp out fraud in the ordinary channels of trade by a naked order, and the decisions last referred to were based on precedents established in lottery cases pure and simple. Moreover, these decisions were rendered in equity cases wherein the offending parties sought to enjoin the execution of the order.

The better considered decisions, however, support the doctrines here contended for. And the theory on which the delivery of mail is forbidden in fraud order cases is aptly stated by Judge Barr in one of these cases, wherein he says:

> "It may in this connection be admitted that the Government of the United States has heretofore exercised the power and has the constitutional right by its executive officers or agents to seize a thing which has been used in violation of law. In such cases the thing seized is treated as guilty."

Hoover vs. McChesney, 81 Fed. R. 472, 480.

But in cases like the one at bar wherein the petitioning stockholders are confessedly innocent, and are claiming the right to have mail delivered which contains nothing injurious to the public welfare, health, morals or safety, it is a violation of their constitutional right to seize such letters and prevent their delivery.

While we do not concede for a moment that the petitioning corporations or their manager were doing a fraudulent business, or that any fraud was proven in the hearing before the Assistant Attorney General, we respectfully submit that any person has a constitutional right to do business with a fraudulent concern if he wishes to, so long as that business does not constitute a menace to the public morals, health, or safety, and he has a constitutional right to transact such business by mail despite the opinions of the Postmaster General. The Postmaster General has no right under the constitution or the laws to curtail the right of the sender of letters, by pre-

venting their delivery to the addressee so long as the sender has paid the postage thereon, unless the sender is himself transgressing the law (as in the case of lotteries). In other words, the *sender* has the right to have them transmitted and delivered.

The mere fact that the petitioning stockholders in cause No. 2116 in this court are denied the right to have their letters delivered to Mr. Degge and the corporations in question because of the order of the Postmaster General, when they themselves are without fault of any kind, is overwhelming proof that the construction of the law adopted by the Postmaster General is fundamentally wrong, while the construction we are contending for is the only safe and rational one.

We do not find any case in the books in which the questions raised here by the petitioning stockholders have ever been raised before, and since there is irreconcilable conflict in the decisions of the Federal Courts in Fraud Order cases, while the two decisions of the Supreme Court of the United States under the law as it now stands were the decisions of a divided court, it devolves upon this court to decide the questions here raised in accordance with its own conceptions of right and justice, uninfluenced by prior decisions, except so far as they may harmonize with the principles underlying our constitution and form of government, remembering that a decision in a given case is always more or less colored by the facts and circumstances underlying that particular case.

And when, as in the present case, 1354 petitioners apply to the court for redress, claiming that the Postmaster General is seizing the letters which they have sent, postage prepaid, without warrant and without probable cause, supported by oath or affirmation as required by the fourth amendment to the Federal Constitution, the decision of this court, instead of being controlled by doubtful precedent, should be rendered in accordance with the fact and circumstances underlying the case at bar, and in harmony with the immutable principles of right and justice.

It is hardly possible to foresee the end of a case from the beginning. It is a matter of supreme importance, however, that a case of this kind shall be thoroughly investigated and

considered. This can only be done by reversing the judgment of the lower court with directions to issue the writ as prayed in the petitions, in order that the authority and jurisdiction of the Postmaster General to issue the Fraud Order may be intelligently determined.

With confidence in the justice of our cause, therefore, we respectfully submit the same for the determination of this court.

WALTER B. GUY,

O. A. ERDMAN,

Attorneys for Appellants.

# INDEX.

IV.

V.

# In the Supreme Court of the United States.

OCTOBER TERM, 1912.

W. W. DEGGE, THE WELLINGTON ASSOCIATION, The Wellington Development Company, and The Wellington Investment Company, plaintiffs in error, v. FRANK H. HITCHCOCK, AS POSTMASTER General of the United States. — No. 157.

MYTTON MAURY, THOMAS E. IRVINE, O. J. Watrous, John A. Webber, et al., plaintiffs in error, v. FRANK H. HITCHCOCK, AS POSTMASTER General of the United States. — No. 158.

*IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.*

## BRIEF FOR THE UNITED STATES.

### STATEMENT.

These two cases involve an attempt to review by certiorari proceedings, and have vacated the action of respondent, as Postmaster General, in issuing a so-called fraud order.

They arise out of the same transaction, and differ only as to the petitioning parties, and have therefore been consolidated for hearing and argument, following the course adopted in the court below. References herein will be to the record in case No. 157.

Respondent, as Postmaster General, found that the enterprise, which the petitioners in the first of the above cases were carrying on, was a fraudulent scheme for obtaining money through the mails by false and fraudulent pretenses, representations, and promises, and accordingly issued an order directed to the postmaster at Boulder, Colorado, prohibiting the payment of any postal money orders and the delivery of any letters, registered or unregistered, to said petitioners. (R., 5.)

The petitioners in the second case are stockholders in the corporation affected by the order, some of them being also directors.

Proceedings were begun by filing petitions for writs of certiorari in the Supreme Court of the District of Columbia. Orders to show cause were issued, and respondent filed answers excepting to the jurisdiction of the court, and setting forth reasons, based upon the merits of the controversy, against the issuance of the writs. The cases were considered on petition and answer, and the writs were refused. The Court of Appeals affirmed this order, and the cases come here on writs of error.

From the return of the Postmaster General to the rule to show cause it appears that petitioners were engaged in the usual scheme of selling stock, by false

and alluring promises of immediate enormous returns, and by fraudulent representations as to past and existing facts.

The petitioner Degge, the originator and operator of the scheme, had been postmaster at Norfolk, Virginia, but was removed in January, 1898, for embezzlement. He thereupon removed to Colorado and has since engaged in promotions similar to the one involved here. (R., 56.)

Prior to 1906 Degge had organized a corporation called the Wellington Association, two-thirds of the stock of which he owned or controlled. A large part of the preferred stock had been sold to his victims throughout the country, and up to June 30, 1908, he had paid dividends on this stock of about $58,000, of which upwards of $22,500 had been paid on his own holdings. (R., 50.)

None of this money was made by legitimate business transactions by the Wellington Association; on the contrary, it was made through the promotion of fraudulent subsidiary companies, organized by Degge, and which became a part of what he called the "Wellington System." These companies are too numerous to mention here, but he pursued the same course with all.

A fair illustration is the Wellington Development Company. This had a capital stock of 3,000,000 shares, of the par value of $1.00 each. The association sold to it four mining claims (which had cost the Association nothing) for 500,000 shares of the Development company stock, and later the Asso-

ciation purchased 350,000 shares more at 10 cents a share. Degge also purchased from the company in his own name 100,000 at 10 cents a share. At the time of these purchases the stock was being sold to the public at 25 cents. Degge and the Association advertised the treasury stock of the Development company, stating positively that there were no promoters' profits, and that the receipts from stocks would go into the treasury for investment and making other false statements and promises. By this means the promotion stock was sold by the Association at 25 cents a share to purchasers who believed they were buying treasury stock and that their money was going into the Development company itself.

The only investments made by the Development company were in purchases from the association of interests in mines and lands at vastly more than the Association had paid. (R., 32, 33.) As a result of these transactions the Development company became insolvent, one of its purchases, the Mammoth mine, for which it had paid $70,000, being worthless. In the meantime Degge had guaranteed to either pay a dividend or buy back this stock. By means of false entries he thereupon transferred enough money from the Association to the Development company to pay this dividend, and the payment was heralded by him as a most remarkable achievement and used for the purpose of selling additional stock. (R., 37, 38.)

In the course of its existence the Association had made profits aggregating some $227,000, all of which

consisted of profits from selling stocks of the subsidiaries and of profits diverted from their treasuries. (R., 47.)

The fraudulency of the scheme is clearly apparent from a consideration of the cost of the promotion. The three main companies, the Association, Investment company, and Development company had raised $375,000 at an aggregate cost of $174,000, or a percentage of 46 per cent. (R., 52.)

The four subordinate companies in the system were even more costly to finance, the cost running from 63 to 139 per cent of the amount enticed from the public. (R. 53.)

January 21, 1909, Degge was called upon to show cause why a fraud order should not be issued against himself and the companies composing the Wellington System. (R. 2, 3.)

Later a formal hearing was had before the Assistant Attorney General for the Post Office Department, who was charged by law with a consideration of such matters, and at this hearing the post-office inspectors testified, and were cross-examined, and there was produced a great mass of circulars and advertisements issued by Degge and the companies; the audit made by the Continental Audit Company of the books of the fraudulent companies; and the statement made by Degge to the inspectors, and information obtained by them from their own examination of his books.

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Two days were consumed in this hearing at which Degge and the companies were represented by counsel, and such additional time as Degge requested was given for the further presentation of evidence. (R., 20, 21.)

Upon all this evidence, the fraud order aforesaid issued.

No assignment of error accompanies the transcript in these cases, and the assignment contained in the brief is too general to be of any value. The petitions themselves set forth three objections to the Postmaster General's action, as grounds for review by certiorari:

1. That the persons affected by the order were not accorded a sufficient hearing and opportunity to be heard in opposition to the promulgation of the order.

2. That their enterprise was not a fraudulent scheme within the meaning of the statute relating to fraud orders.

3. That evidence offered by them in opposition to the original charges was ignored, and that the evidence considered did not establish a violation of the law.

STATUTES.

Sec. 3929 of the Revised Statutes as amended by the act of September 19, 1890 (26 Stat., 465), provides that—

> The Postmaster General may, upon evidence satisfactory to him that any person or

company is engaged in conducting any lottery, gift enterprise, or scheme for the distribution of money, or of any real or personal property by lot, chance, or drawing of any kind, or that any person or company is conducting any other scheme or device for obtaining money or property of any kind through the mails by means of false or fraudulent pretenses, representations, or promises, instruct postmasters at any post office at which *registered* letters arrive directed to any such person or company, or to the agent or representative of any such person or company, whether such agent or representative is acting as an individual or as a firm, bank, corporation, or association of any kind, to return all such registered letters to the postmaster at the office at which they were originally mailed, with the word "fraudulent" plainly written or stamped upon the outside thereof; * * *

By section 4041 the Postmaster General is authorized in similar terms to forbid the payment by any postmaster of any postal money order drawn in favor of any person engaged in the prohibited business; and by section 4 of the act of March 2, 1895 (28 Stat., 963), the power thus conferred upon the Postmaster General by the preceding section 3929 is extended and made applicable to *all* letters or other matter sent by mail.

ARGUMENT.

## I.

**No assignment of error accompanied the transcripts, and that contained in the brief is too general.**

For this reason the writs of error may be dismissed in the discretion of the court.

*Columbia Heights Realty Co.* v. *Rudolph*, 217 U. S., 547.

*Briscoe* v. *Rudolph*, 221 U. S., 547.

The records in these cases were filed here after the decision in the first of the foregoing cases, and therefore the old practice in the District of Columbia is no longer an excuse.

The assignment of errors in the brief is too general to comply with the rule.

*Van Stone* v. *Stillwell*, 142 U. S., 128.

## II.

**Certiorari Does Not Lie to Review Administrative Action by Cabinet Officers.**

The court of appeals said in these cases:

> It has never been determined, however, that the writ will lie to review a quasi-judicial proceeding before the head of an executive department of the United States Government.

It is remarkable that in the course of nearly a century and a quarter, there should have been no direct adjudication upon this question. It cannot be

because the actions of the executive officers have not been freely criticized, for there have been scores of injunction and mandamus proceedings in this court against them.

It is more reasonable to believe that the failure to obtain a decision on this question is because of practically universal acquiescense in the opinion that the writ of certiorari does not lie to the heads of the executive departments. And this acquiescense is of itself a strong argument in support of the proposition.

In *United States* v. *Young*, 94 U. S., 256, this court said, in speaking of certiorari, that the writ was used for two purposes; one, as an appellate proceeding to review some action of an inferior tribunal; this is characteristic of the writ, that it must issue from a superior to an inferior tribunal.

For this reason alone, the writ will not run to the head of an executive department. He is not inferior to, but is coordinate with the judiciary, and while his action may require the exercise of judgment and discretion, it is none the less an executive or administrative act.

While, as already said, this court has never had the precise question before it, the effect of its decisions in mandamus and injunction cases from *Marbury* v. *Madison* to the present time, is to settle that the courts can not, in any manner, either directly or indirectly, review the decision of the executive

officer on a question of fact which Congress has submitted to his determination.

*Marbury* v. *Madison*, 1 Cranch, 137;
*Decatur* v. *Paulding*, 14 Pet., 497, 515;
*Gaines* v. *Thompson*, 7 Wall., 347;
*Marquez* v. *Frisbie*, 101 U. S., 473;
*U. S. ex rel.* v. *Black*, 128 U. S., 40;
*Riverside Oil* v. *Hitchcock*, 190 U. S., 316;
and
*Bates & Guild Co.* v. *Payne*, 194 U. S., 106.

It is true that this court has held that it can enforce ministerial action on the part of an executive officer, where he has, through a mistaken opinion of the law, declined to act, and can, on the other hand, restrain illegal action on his part; but this is done by the writ of mandamus, or of injunction, to enforce or restrain action, to accomplish which the writ of certiorari is wholly inappropriate, nor does it involve a review of his decision, as would be done on certiorari.

To invoke the prediction of this court, in *Bates & Guild* v. *Payne*, *supra*, the probable consequence of holding that the writ of certiorari should issue in the present cases may be the flooding of the court by applications for a writ of certiorari to review the decision of every executive officer in every individual instance.

## III.

### Scope of the writ of certiorari.

At common law, and in the District of Columbia, a writ of certiorari runs to an inferior tribunal only to ascertain whether that tribunal had jurisdiction

and has observed due process of law; it does not serve the purpose of a writ of error or appeal.

*Harris* v. *Barber*, 129 U. S., 366;
*Reaves* v. *Ainsworth*, 219 U. S., 297;
*In re Schneider*, 148 U. S., 162;
*District of Columbia* v. *Burgdorf*, 6 App. Cas., D. C., 471;
*Hendley* v. *Clark*, 8 App. Cas., D. C., 165;
*Bradshaw* v. *Earnshaw*, 11 Ib., 495;
*The King* (*Martin*) v. *Mahoney* [1910], 2 Irish Law Reports, 695, 727 *et seq.;*
*People* v. *Lindblom*, 55 N. E., 358 (Ill.);
*Phillips* v. *Welch*, 12 Nevada, 158; and
*Basnet* v. *Jacksonville*, 18 Fla., 523.

In some jurisdictions the scope of the writ, without legislative action, has been enlarged to include questions of law arising on the record, and the question whether the finding is supported by any evidence.

*People* v. *Board of Police*, 39 N. Y., 506.
*Keenan* v. *Goodwin*, 17 R. I., 649.

But it is practically universally agreed that the case is not reviewable on the merits, and that the writ of certiorari is not appropriate to settle disputed questions of fact or to weigh conflicting evidence, if there was any evidence at all before the tribunal.

*Farmington River Water Power Co.* v. *County Commissioners*, 112 Mass., 206.
*State* v. *Hudson*, 32 N. J. L., 365.
*Harris* v. *Barber*, 129 U. S., 366, *supra.*
*Reaves* v. *Ainsworth*, 219 U. S., 297, *supra.*
*Rawson* v. *McIlvaine*, 49 Mich., 194.
*State* v. *Common Council*, 53 Minn., 238.
*Imperial Water Co.* v. *Board of Supervisors*, 120 Pac., 780, 786 (Cal.).

And if the court has the power on certiorari to review questions of law, it will not interfere with the decision of the Postmaster General unless clearly of the opinion that such decision was wrong.

*Smith* v. *Hitchcock*, decided this term.
*Bates and Guild Co.* v. *Payne*, 194 U. S., 108.

## IV.

**The action of the Postmaster General can not be quashed on writ of certiorari.**

An examination of the facts contained in the Postmaster General's answer to the rule to show cause, and exhibits, will show that his decision can not be quashed, even though the broadest scope under the common law be given to the writ of certiorari, because—

(a) The Postmaster General had jurisdiction of the charge;

(b) His decision was correct in law and his findings of fact were supported by ample evidence;

(c) His order was within his jurisdiction; and

(d) He observed due process of law.

(a) *The Postmaster General had jurisdiction to issue the fraud orders.*

Sections 3929 and 4041, as amended, authorize the Postmaster General to issue a fraud order upon evidence satisfactory to him that any person or company is conducting any lottery, or other scheme for obtaining property through the mails by means of fraudulent pretenses, representations, or promises.

The constitutionality of these statutes was sustained in *School of Magnetic Healing* v. *McAnnulty*,

187 U. S., 94; *Public Clearing House* v. *Coyne*, 194 U. S., 497.

(b) *The fraud order issued by the Postmaster General was correct in law, and his findings of fact were supported by ample evidence.*

1. *The law.*

The statutes authorize the issue of the fraud order in the case of a lottery, or of a scheme to defraud. The scheme to defraud is entirely distinct and independent from the lottery.

> *Public Clearing House* v. *Coyne*, 194 U. S., *supra*.
>
> *Harris* v. *Rosenberger*, 145 Fed., 449 (C. C. A., Van Devanter, J.)

The evil sought to be remedied is the same. Cupidity is aroused by the offer of large dividends, just as much as by the chance to secure a prize in a lottery.

> *Durland* v. *United States*, 161 U. S., 306, 313.

What constitutes a scheme to defraud is fully settled.

It includes false representations of existing facts, false and fraudulent promises and representations touching the future, and also the illegitimate use of a business organization. Even legitimate forms for conducting business are condemned, if used as a vehicle for the perpetration of fraud.

> *Durland* v. *United States*, 161 U. S., 306.
>
> *U. S.* v. *Stever*, 222 U. S., 167.
>
> *Public Clearing House* v. *Coyne*, 194 U. S., 497.

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*United States* v. *Loring*, 91 Fed., 887;
*O'Hara* v. *United States*, 129 Fed., 551 (C. C. A., 6th Cir.);
*Missouri Drug Co.* v. *Wyman*, 129 Fed., 623;
*Miller* v. *United States*, 133 Fed., 337 (C. C. A., 8th Cir.);
*Harris* v. *Rosenberger*, 145 Fed., 449 (C. C. A., Van Devanter, J.);
*Horn* v. *United States*, 182 Fed., 721 (C. C. A., 8th Cir.);
*Rimmerman* v. *United States*, 186 Fed., 307 (C. C. A., 8th Cir.);
*M'Carthy* v. *United States*, 187 Fed., 117 (C. C. A., 2d Cir.);
*Branaman* v. *Harris*, 189 Fed., 461; and
*Wilson* v. *United States*, 190 Fed., 427 (C. C. A., 2d Cir.).

And it is entirely immaterial that the stock sold by means of such a scheme to defraud may have some value, provided it has not the value which was expressly attributed to, and claimed for, it.

*Branaman* v. *Harris*, 189 Fed., 461; and
*Harris* v. *Rosenberger*, 145 Fed., 449, supra.

2. *The scheme of the petitioners was one to defraud, and the findings of fact of the Postmaster General in connection therewith are supported by ample evidence.*

As summarily stated in paragraph 15 of the answer, respondent found:

> That he, the said W. W. Degge, created a "Wellington Association," which he controls and dominates, and is the owner of said company, except for some small outstanding interests in other parties, whom he also controls;

that from time to time the said Degge created various other concerns, all of which he controls and dominates, these other concerns being termed the "Wellington Development Company," the "Wellington Investment Company," and the "Wellington System"; that the stock of the various subsidiary concerns the said Degge sold through the mails to the public at various prices under par, using for the purpose great quantities of printed advertising circulars, therein falsely pretending that with the funds so obtained from the sales of such stock the said companies would be developed into mining and other enterprises of great value and profit, and through such advertisements and circulars the said Degge made other false and fraudulent statements; that the funds obtained by such sale of stock, he, the said Degge, diverted to his own enrichment by various methods, such as by the sale of property from the said association to said subsidiary companies, by contracts for commissions to said association for selling stock, and by various other illegal and fraudulent methods; that in the operation of this scheme the said Degge was getting mail through the post-office establishment of the United States as the Wellington Association, the Wellington Development Company, the Wellington Investment Company, and the Wellington System, and also in his own name, W. W. Degge; all of which will more fully and at large appear by the report of the said R. P. Goodwin, filed herein, and marked "Respondent's Exhibit A," and prayed to be read as a part of this paragraph.

THE SCHEME.

The report of the Assistant Attorney General for the Post Office Department following the hearing before him and his consideration of the case, which respondent refers to and incorporates into his answer sets forth petitioners' enterprise and its mode of operation as follows:

A corporation called the Wellington Association was organized by Degge and incorporated January 2, 1905, with a capital stock of $500,000 divided into 500,000 shares of the par value of $1.00 per share. An audit of the company's books, on June 30, 1908, showed 156,020 shares of preferred stock then outstanding; 124,770 shares in the hands of 607 individuals and 31,250 shares together with 225,000 shares of common stock in the hands of Degge and his family. Degge's answer of February 16, 1909, to the citation to show cause why a fraud order should not issue, increased the number of preferred shares held by these 607 outsiders by a few hundred, but this increase was probably due to the fact that the shares were sold on the instalment plan and were not recorded as issued until full payment had been made. Degge and his family acquired their holdings, with the exception of 6,250 shares of preferred stock in exchange for certain properties, mining and oil stocks, etc. (Rec., p. 23), and the shares issued to others were sold through the mails, as a result of advertisements. These sales were all made prior to May, 1906, and no stock was sold subsequently. (Rec., pp. 22–3.)

Thereafter, and from time to time, Degge organized and had incorporated the following companies (Rec., p. 24):

The Wellington Goldfield Mining Company, incorporated June 10, 1905, under the laws of Arizona, with 1,500,000 shares of stock of the par value of 25 cents per share.

The Manhattan Chief Gold Mining Company, incorporated February 6, 1906, under the laws of Arizona, with 1,000,000 shares of stock of the par value of $1.00 per share.

The Midway Mines and Towns Company, incorporated March 29, 1906, under the laws of Arizona, with 1,000,000 shares of stock of the par value of $1.00 per share.

The Wellington Realty Company, incorporated April 10, 1906, under the laws of Colorado, with 5,000 shares of the par value of $100 per share, very little of which was sold to the public, the association having early ceased to offer it, retaining most of it for itself.

The Wellington Development Company, incorporated January 10, 1907, under the laws of Arizona, with 3,000,000 shares of stock of the par value of $1.00 per share.

The Wellington Investment Company, incorporated January 4, 1908, under the laws of Arizona, with 3,000,000 shares of stock of the par value of $1.00 per share.

All of these companies, including the Wellington Association, were managed, controlled, and dominated

by Degge, who stated to the post-office inspectors that he was responsible for everything that was done by them. Degge himself was president, treasurer, and a director of the Association and of the Development and Investment companies, and his attorney, bookkeeper, and other employees occupied the remaining offices and also acted as directors. (Rec., p. 28.)

The stock of the subsidiary companies was offered to the public by means of advertisements and circulars and was sold through the mails in small blocks to a considerable aggregate amount, the audit of June 30, 1908, of the companies' books showing that $246,713.65 was paid by the public for treasury stock. (Rec., p. 24.)

The system was advertised and described as the "Wellington System" or the "New Way," "The fairest and most equitable investment company in the West." It was distinctly stated and represented that the system was characterized by the absence of promoters' profits, and blocks of promotion stock; by the turning in of properties to the companies at original cost "without graft for officers or directors"; the absence of special pools and deals of all kinds; and the placing of every share of stock in the treasury, with equal opportunity to all to purchase on equal terms with the officers and directors. (Rec., pp. 48-5.)

This was a system which peculiarly represented the man "who puts up the money," and whose aim was "the conservation of profits for the stockholders."

(Rec., p. 48.) Its "big feature" was the inability of one corporation in the system "to detract from another." (Rec., p. 48.)

In some of his printed utterances Degge stated, without qualification, that he had never received a single share of stock in consideration of promoter's services, but that he had bought and paid for his stock and had taken his profits only on the same basis as other shareholders. (Rec., pp. 48–9.)

The system was represented to "own outright" some of the most substantial mining properties in Nevada and Colorado (Rec., pp. 54–5), and the public was informed that its confidence had enabled the promoters to finance these various companies at a total cost of 25 per cent, "covering all expense," so that the system provided for the investment of 75% of all the money received for stock in safe real estate investments and irrigation enterprises. (Rec., p. 51.)

When the Wellington Investment Company was launched the public was informed and admonished to reflect that this company was being organized along the lines of the Wellington Association and, like its prototype, would be conducted in the interest of its stockholders, who were declared to be its real promoters; that every share of its stock would be placed in the treasury; that it would be "truly cooperative;" that it would develop, or spend the necessary funds to prove up, "extra good prospects," and that its principal business would be to handle good properties "with ore already in

sight." It was also stated that this company would be engineered and pushed to success by the same management that had made the association a successful dividend payer; and the fact that the latter company had paid 72% in dividends in four and one-half years was emphasized as an index of the success of the system. (Rec., pp. 44–6.)

Respondent has found that all of these representations were false, with the exception of the enormous dividends declared and paid by the Wellington Association. As to this he found that they were paid from funds acquired by the Association by systematically looting and diverting funds from the treasuries of the subsidiary companies. Indeed, this seems to have been the "Wellington way," though it was scarcely new.

PROMOTERS' PROFITS.

The organization of a new company was invariably attended with an exchange of a large block of stock of undeveloped and improved mining properties acquired by the Association at little or no expense.

The Wellington Goldfield Mining Company paid 700,000 shares to the Association in exchange for five claims of this sort, and 120,000 shares were issued to the promoters. An additional 100,000 shares were sold to the Association for $2,700 in cash.

For three such claims the Manhattan Chief Gold Mining Company paid 700,000 shares; 300,000 to the owners, 100,000 to the owners' selling agent, and

300,000 to the Association. The Midway Mines and Towns Company made an equal payment, similarly divided and distributed, for its claims.

The Development company paid the Association 500,000 shares for four claims and gave Degge 500 shares for nothing. The Association and Degge individually purchased from the company, in addition, 350,000 shares and 100,000 shares, respectively, for 10 cents per share, but paid only 7½ cents, for the reason that a 25 per cent commission on these sales was charged against the company. The public price at that time was 25 cents per share (32, 33).

Finally, five undeveloped claims, acquired like the others, at nominal expense to the Association, were conveyed to the Investment company for $10,000. (Rec., pp. 24, 41.)

These transactions and this acquisition of promoters' stock, for such it indisputably was, by the Association and Degge, were subsequently turned to profitable account by the sale of a considerable portion of the stock so acquired. Much of this stock, moreover, was sold in execution of orders for treasury stock of the subsidiary companies when the market price of the latter was high; often when it was 25 cents per share. (Rec., pp. 26, 29, 32–5, 42.)

DIVERSION OF SUBSIDIARY COMPANY FUNDS.

1. *Wellington gardens.*—Contemporaneously with the organization of the Development company, Degge purchased for the Association a tract of 2,800 acres

of dry lands, together with certain water rights, as follows:

| | |
|---|---|
| Tyler tract (2,400 acres) | $60,000.00 |
| Maxwell tract (396 acres) | 30,000.00 |
| Water rights | 20,000.00 |

The deed to the Maxwell tract ran to Degge as an individual and was recorded November 24, 1908, but Degge stated that on November 27, 1908, a declaration of trust was made in favor of the Association, the Development, and the Investment companies in equal shares.

The deed to the Maxwell tract was acknowledged February 3, 1908, and recorded February 13, and ran to Degge as trustee for the same companies.

The paper produced by Degge as the assignment of the water rights, dated and recorded February 3, 1908, also designated him as trustee.

Degge admitted that he acquired these properties for these several companies.

Upon the organization of the Development and Investment companies, he caused them to purchase undivided one-third interests, respectively, charging them therefor $50,000 and $75,000. The Assistant Attorney General could find no evidence of a sufficient appreciation in the value of the properties to justify these figures. Assuming such appreciation, he concluded that the fraud would be greater, since the Association only profited the more at the expense of its subsidiaries. (Rec., p. 28.)

2. *The Mammoth mine.*—Prior to the organization of the Development company Degge and his allies

caused to be organized the Leadville Mining and Leasing Company, with 1,000,000 shares of the par value of $1 per share, to acquire the so-called Mammoth mine. A purchase money bond was given for $89,250, payable, one-half on July 19, 1907, and the remainder, January 19, 1908, which stipulated that no title should pass until full payment had been made. A six-year lease was also taken on the property to be forfeited upon the failure of the lessee company for ten consecutive days to work at least four men underground. The capital stock was distributed, 600,000 shares to the Development company, and 400,000 to the promoters.

No payments were ever made and no title was therefore ever acquired. Furthermore, the lease was forfeited by the abandonment of the property in November, 1907, after an expenditure of some $70,000 for development work, $50,000 at first, and $20,000 following a donation to the company by Degge and the Association of 190,000 shares of the Leadville Company stock, as a result of which only $2,700 worth of ore was ever extracted.

The Assistant Attorney General found that this loss was studiously concealed by carrying the 790,000 shares of Leadville Company stock as an asset of $75,000, as disclosed by the audit of June 30, 1908, and that Degge advertised that the Mammoth mine was being held in reserve until a breathing space in expenditures could be found, that work would proceed as soon as $50,000 could be spared to sink a shaft, and that persons competent to judge believed

that a million dollar property would be opened up. (Rec., pp. 35–37.)

3. *Bogus dividend.*—Early in 1907, Degge, in his circulars and advertisements, guaranteed that the Development company would pay a dividend within the year, or that he would buy back the stock at the price paid for it. In the course of the year, and partly as a result of the Mammoth mine venture, the company really became insolvent, but on December 31, 1907, a dividend of one-half cent per share was declared and paid, amounting in the aggregate to $11,123.85. This was effected through a purchase by the Association of 90,000 shares of Leadville Company stock from the Development company at 15 cents per share, or a total of $13,500. Degge admitted that the dividend was paid from the proceeds of this stock sale, but asserted that the transfer occurred September 29, 1907. In fact, it took place November 30, 1907, following the forfeiture of the Leadville Company lease on the Mammoth mine, obviously, and the certificates were antedated. (Rec., pp. 37–38.)

The payment of this dividend was subsequently advertised as a remarkable achievement. (Rec., p. 38.)

4. *The Venir properties.*—While attempting to develop the Mammoth mine, Degge also bargained with one Wood for his holdings in 2,000 acres of mining properties, in and near Leadville, Colorado, including the interests of Wood and the Peter's estate in the Mammoth mine, in consideration of

$293,000, payable in monthly instalments of $10,000, all prior payments to be forfeited upon default in any payment. Degge paid $10,000 on June 1, 1907, and $10,000 on August 10, 1907, and stopped, forfeiture resulting. Degge appealed in vain to Wood for some property in return for his payments, but finally secured from Wood his four-fifth interest in the Venir group of claims, consisting of 63 acres out of the original 2,000 acres, in consideration of $8,000, Wood expressly refusing to consider the $20,000 a part of the purchase price. From the outset, despite the fact that no title to any part of the 2,000 acres had been acquired, this transaction was advertised as a great property acquisition, and special attention was called to the fact that "the fact that these properties are patented enable the Wellington System to hold these individual claims as long as they wish without doing any work." (Rec., pp. 38–40.)

Later it was falsely stated that, following payments amounting to $2,000, it had been deemed advisable to relinquish all of the eight sections into which the whole property had been divided, save one, the Venir group, to which said payment entitled the company, the most valuable, and estimated by an experienced mining engineer as worth $150,000. This engineer testified, however, that this claim was undeveloped and of unproven value, and that only the work necessary to secure the patent had been done (Rec., p. 40). A one-third interest in this property was subsequently sold to the Investment Company, for which

it was charged $9,333.33, and the Development Company was charged an equal amount for another one-third.

5. *Goldfield Tri-Metallic Mining Company deal.*—Through Degge the Wellington Association acquired for $5,000, 438,000 shares in the Tri-Metallic Company, whose only assets seem to have been Nevada mining claims of unproven value. One-third interests in this stock were subsequently disposed of to the Investment and Development companies for $10,000 and $5,000, respectively.

Degge claimed that these charges were justified by an appreciation in value attributable to development work. However, only $881 was expended in development and only a few hundred dollars' worth of ore for samples was ever produced. The property was subsequently closed down and workmen's liens were filed against it. It was asserted that these claims were subsequently satisfied.

Ignoring these facts, Degge later advertised great values for the property and that it was yielding $225 ore. (Rec., p. 43)

These were some of the principal fund-diverting transactions, but it appears from the audit of June 30, 1908, when regard is had to the worthless character of the properties, etc., involved, that out of $246,713.65 paid by the public into the treasuries of the subsidiary companies, $141,571.00 was diverted in the form of "profits" to the association. (Rec., pp. 25–7, 47.) Add to this the profit resulting from the execution of orders for treasury stock with stock

owned by Degge and by the association, and the 72 per cent paid by the association in dividends is explained.

ORGANIZATION EXPENSES.

The published statement that the constituent members of the system had been financed at a total cost "covering all expenses of 25 per cent, with a resulting liberation of 75 per cent for investment in safe projects," was also false.

True the Development and Investment companies were financed at a cost of 20 per cent and 25 per cent, respectively, but the whole cost of advertising was charged to the Association. Including this charge, the cost of financing the Association amounted to 97 per cent, so that the average for the three was from 46 per cent to 47 per cent. The other companies were floated at a cost of approximately 82 per cent. (Rec., pp. 52–3.)

The Assistant Attorney General also reported that as against $17,019.35 expended by the Goldfield, Manhattan, and Midway Companies on development work, he found that the Association had realized from their organization and flotation $23,364.75 as profits. (Rec., p. 42.) The Association's "profits" derived from the sale of stock in the other companies have already been remarked.

The most cursory examination of the Assistant Attorney General's report to respondent discloses that all of his findings are supported by credible evidence; either the audit of the Continental Audit

Company, some printed advertisement or circular put out by the "system," statements by Degge himself to the post-office inspectors, or the testimony of the latter based upon their own official investigations.

(c) *The fraud order was within the Postmaster General's jurisdiction.*

The order was within the terms of the statute, and prohibited the payment of money orders and delivery of letters, registered and unregistered. It denied the privilege of receiving and sending money through the mails, to persons and corporations found by the respondent to be engaged in a scheme to obtain money through the mails by means of false and fraudulent pretenses, representations, and promises.

The contention that the Investment company and the Development company were victims of Degge, and not participants in the fraudulent scheme, is without merit.

Degge was not only the president of these companies, but admitted at the hearing that he was responsible for every act done by, and in the name of, these companies. (R., 28.)

Their stock was on the market, was vigorously advertised in the names of the companies, and the purchase of such stock was solicited through the mails; shares were sold in large amounts on the advertisements of the companies. The two corporations were therefore participants in the scheme to defraud, even though they were entirely managed by Degge, and, as among themselves, their assets were diverted to a third corporation. They were an

essential part of the scheme to defraud, and if the order had not included them it would have been nugatory. To say that these companies, if separated from Degge, could now conduct their business legitimately is no answer to the condition that the postmaster found to exist at the time of his investigation.

(d) *Due process of law was observed by the Postmaster General.*

The statutes merely require the Postmaster General to act upon evidence satisfactory to him, and where he does base his action upon such evidence he is observing due process of law.

> *Public Clearing House* v. *Coyne*, 194 U. S., 497.

While no hearing is required under this statute (Ib., and *Peoples Bank* v. *Gilson*, 140 Fed., 1), a full hearing was given, and was properly had before the Assistant Postmaster General, who is charged by the postal regulations (section 16, par. 4) with the duty of hearing and considering such cases.

> *Smith* v. *Hitchcock* (decided at the present term).

The facts were established to the satisfaction of the Postmaster General by the testimony of the inspectors, and by the documentary evidence, answers and statements of Degge himself. This evidence was sufficient.

Degge was present at this hearing, represented by counsel, and permitted to cross-examine the witnesses,

and was given all the time which he desired within which to rebut their evidence. (R. 12–14.)

Ample notice of the investigation, and opportunity to be heard was given to the Development company and the Investment company. It is true that the formal charge sent to Degge (R., 2, 3) recommends that a fraud order be issued against Degge, but it expressly states that the scheme to defraud is being conducted by the numerous corporations, and among them specifies the Investment company and the Development company. The evidence dealt with them, and the final fraud order excluded them from the mails.

For all practical purposes, therefore, due process of law was observed as to them; they were notified, appeared, gave evidence, and submitted to the judgment of the Postmaster General.

But any objection that the Postmaster General exceeded his jurisdiction in issuing a fraud order against these companies on the ground that they were not called upon to answer is too late now because not made in the petition for the writ.

V.

**The trial court properly refused the writ on the merits following the hearing on petition and answer.**

The writ does not issue as of right, but in the discretion of the court (*Ex parte Hitz*, 111 U. S., 766; *District of Columbia* v. *Brooke*, 29 Ap., D. C., 563; *Hyde* v. *Shine*, 199 U. S., 362), so that it is competent for the court to issue an order to show cause why

the writ should not be issued, as was done in this case, and to determine the whole case on the preliminary proceedings, instead of on the return to the writ itself.

The purpose of this form of procedure was to ascertain whether for any extrinsic reasons the court should, in its discretion, deny the writ, and there is no reason against the court's determining the matter on the merits, if the preliminary proceedings supply the necessary material. The only difference is that the court's decision is more fully reviewable on writ of error, since questions of law are involved, in addition to the mere question of the propriety of the lower court's exercise of its discretion.

*People ex rel.* v. *Board of Assessors*, 39 N. Y., 87.

The practice is followed in many jurisdictions.

*Ex parte Dugan*, 2 Wall., 134.

*American Construction Co.* v. *Jacksonville Ry.*, 148 U. S., 372, 88.

*Farmington River Water Power Co.* v. *County Commissioners*, 112 Mass., 206.

*Walbridge* v. *Walbridge*, 46 Vt., 617.

Similar procedure is sanctioned by this court for other extraordinary writs.

*Ex parte Yarborough*, 110 U. S., 651, 652 (habeas corpus).

*Ex parte Webb*, 225 U. S., 963 (habeas corpus and certiorari).

*In re Baiz*, 135 U. S., 403 (prohibition).

*Riverside Oil Co.* v. *Hitchcock*, 190 U. S., 316 (mandamus).

The objection is made in this case, however, that the answer was not as full as the return to the writ must have been, because petitioner's answer to the citation and notice of the original charges was not included and because some of the evidence relied on by respondent was also omitted.

The short answer to this objection is that petitioners were at liberty to object to, traverse, or reply to respondent's answer. And since they stood by and failed to exercise this privilege, they can not now be heard to complain. They are concluded by respondent's answer.

> *Dist. of Col.* v. *Brooke*, 29 App. D. C., 563.
> *Collins* v. *Holyoke*, 146 Mass., 298.
> *Brown* v. *Atlanta*, 123 Ga., 497.

Furthermore, respondent's answer discloses a large amount of credible and substantial evidence to support his findings and conclusions, so that the only effect of petitioner's answer to the original citation and charges would have been to create a conflict in the evidence, and to emphasize the dispute as to the facts. No error was committed by the court in proceeding without it, therefore, for it is well established that the writ of *certiorari* does not lie to have evidence weighed or to settle disputed questions of fact.

> See cases cited on p. 11.
> *Imperial Water Co. No. 1* v. *Board of Supervisors* (Cal., 1912) 120 Pac., 780 at 786.
> This case involved *certiorari* to the board of supervisors to review its action in organizing an irrigation district. Following the return to

the writ, petitioner moved to have all of the testimony sent up. Held, the motion was improper, because it was not claimed that this testimony would do more than create a conflict in the evidence of jurisdictional facts.

The objection that respondent failed to include in his answer all of the evidence adduced at the hearing before the Assistant Attorney General for the Post Office Department falls for the same reasons and because the writ does not lie to bring up evidence. But the answer does detail evidence upon which respondent based his conclusions and acted, and alleges that the only evidence considered was that adduced at the hearing (Rec., pp. 14–15, 17). Coupled with the further allegation that the inspectors of the Post Office Department testified orally at the hearing, this circumstance, which must be accepted as true, since the answer was not traversed or replied to, utterly defeats the objection that some of the evidence was withheld from the court and that certain confidential reports figured materially and to petitioner's detriment.

## CONCLUSION.

It is respectfully submitted that the judgments appealed from should be affirmed.

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